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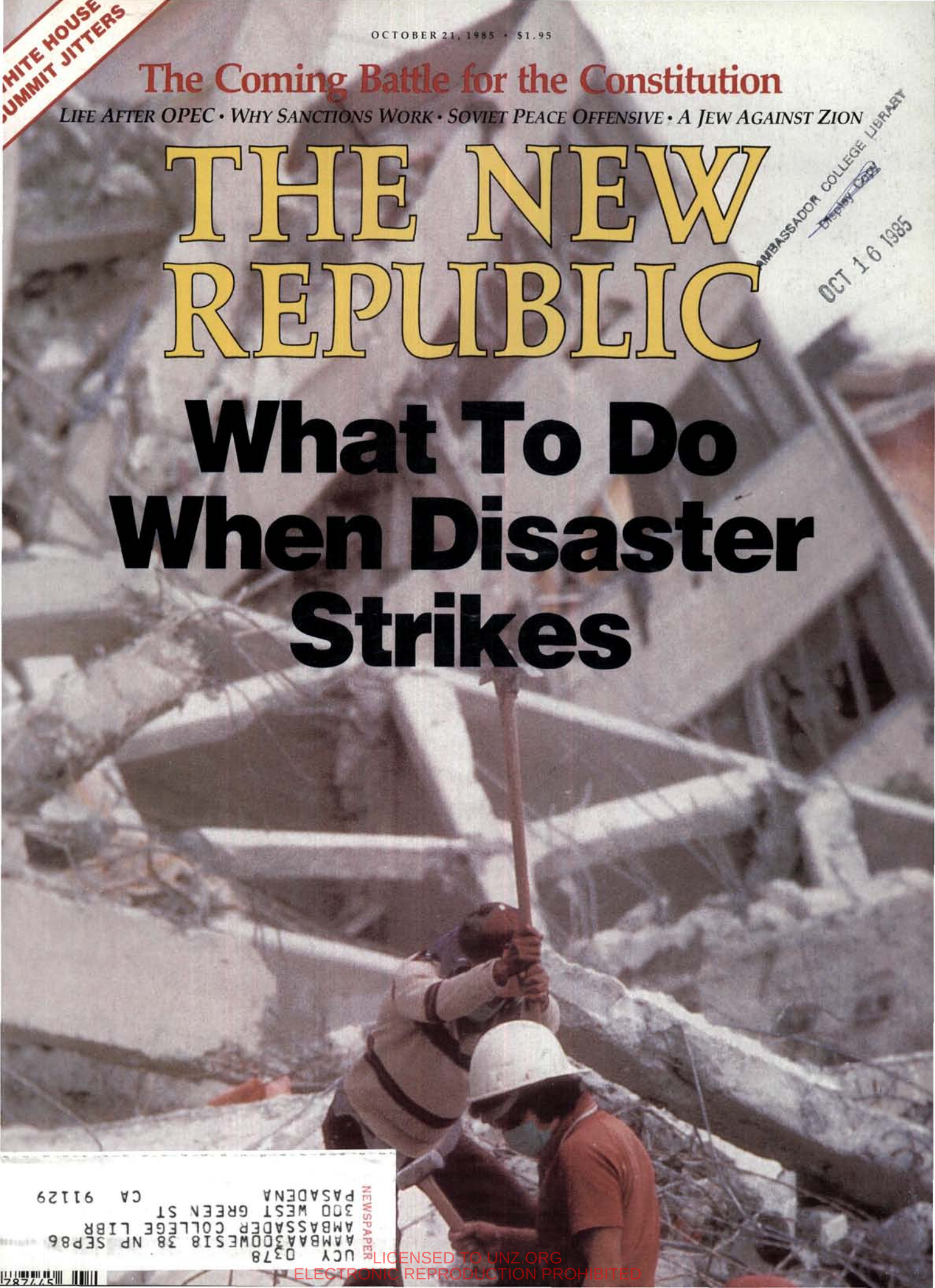

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# THE DRAMA OF SERVICE

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*In Birmingham, Alabama,* WBRC-TV waged an all-out campaign against drunk driving, with news programs, talk shows, and public service announcements carrying the message every day. There has been a substantial drop in traffic fatalities due to drunk driving in the area, with *no* deaths last New Year's Eve for the first time in memory. WBRC earned a citation from the Alabama Department of Highway and Traffic Safety for its efforts.

*In Seattle, Washington,* KOMO-TV has been airing public service announcements on children missing from home in the Seattle area, along with a telephone hotline number. To date, "Missing Kids" has helped to locate 26 children.

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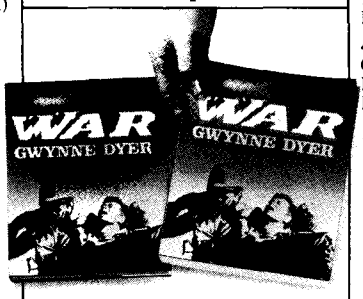


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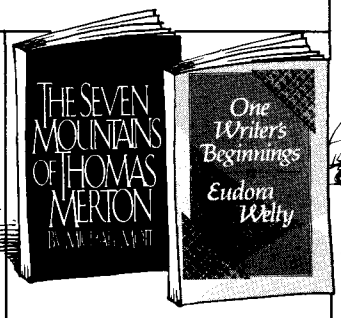


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# TRB®

FROM WASHINGTON

## COMPASSION, REAGAN-STYLE

You may be under the impression that the Reagan administration detests racial favoritism, even to make up for past racial injustice. For blacks and other minorities at the bottom of life's ladder, that's true. But there's one type of "reverse discrimination" that has flowered during the Reagan years: affirmative action for the rich.

Consider O. J. Simpson, Julius Erving, the Jackson brothers, Stevie Wonder, Donald McHenry, and the owner of the Philadelphia Coca-Cola bottling company. They are among the oppressed individuals who have saved millions of dollars on the purchase of television stations, thanks to an FCC rule giving a huge tax break to companies that sell stations to minorities. President Reagan's FCC chairman, Mark Fowler, far from protesting this blatant racial preference, has praised and enlarged it. As of 1982 the tax break is available in cable TV and several other new situations.

For years the FCC has given preference to minorities and women under its absurd system of measuring people's moral worth before giving them valuable broadcast licenses for free. In the spirit of deregulation, Reagan's FCC has been experimenting with a straightforward lottery in some new broadcast fields. But even in the lottery, you get three "tickets" if you're black and only one if you're white. The inevitable result has been a proliferation of black fronts for white broadcasters. "I'm sure there were some genuine black applicants somewhere," says a lawyer involved in the process, "but I'm not aware of any."

In 1982 Congress passed and Reagan signed a law reserving ten percent of all federal highway funds for "business concerns owned and controlled by socially and economically disadvantaged individuals." Blacks, Hispanics, etc., are presumed to be "disadvantaged." Reagan Transportation Department regulations require each state to meet the ten percent quota on federally funded projects unless the governor specifically petitions for redress.

Reagan has been an enthusiastic promoter of the Small Business Administration's 8(a) "set-aside" program, in which government contracts are awarded to minority firms without competitive bidding. The 1984 Republican platform bragged of "$2.3 billion in federal sole-source contracts to minority firms" under 8(a)—"a 45 percent increase over 1980." In 1983 Reagan issued an executive order requiring each federal agency to produce a "minority business enterprise development plan" establishing "objectives" for minority contracting.

How "socially and economically disadvantaged" can you be if you own a company capable of performing a major federal contract? Almost by definition, the beneficiaries of business affirmative action are either affluent and successful already or just fronting for whites. By all accounts, these minority set-aside programs are spectacularly corrupt. Stories about fraudulent minority enterprises are now standard muckraking fare. This is what tripped up former labor secretary Ray Donovan, for example.

But these stories are another example of TRB's law of scandals, which holds that the real outrage isn't what's illegal: it's what's legal. In this case, the difference between breaking the law and doing exactly what the law intends is infinitesimal. The 8(a) program *encourages* white firms to "sponsor" minority subcontractors. Sponsored or not, a company qualifies for favoritism if minorities hold 51 percent of the stock (whether they paid for it or not) and are even arguably in control. Very often the woman behind many "women's" firms in the construction and broadcast industries, which get many of the same special breaks, is the wife of an established contractor or broadcaster. Perfectly legal.

On the local level, similar minority set-aside laws have given a high civic gloss to what used to be considered simple graft. In a typical saga, *The Chicago Tribune* reported earlier this year that a national newsstand chain had given a one-fifth interest in their fran-

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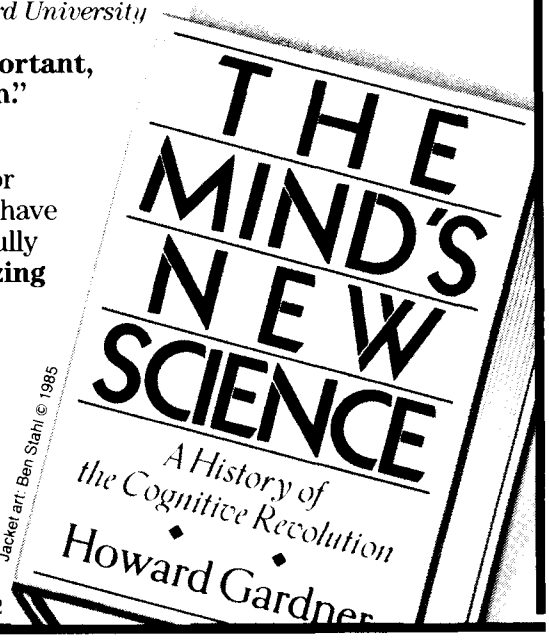


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# CORRESPONDENCE

## VOTING RIGHTS REBUTTAL

*To the editors:*

Edward Still argues (Correspondence, October 14) in response to my article "Voting Rights Trap" (September 2) that I need a lesson in reading legislative history—that the Senate Judiciary Committee report made clear congressional intention to drastically alter the standards by which changes in electoral procedure submitted for preclearance under section five of the Voting Rights Act would be judged. I stand by my original statement: "Members of Congress were assured that the change [in section two] implied no alteration in the preclearance provision. . . ."

On the last day of House debate on the 1982 amendments to the act, Don Edwards, chairman of the House subcommittee on civil and constitutional rights, assured two members of Congress in separate statements that section five remained untouched. "No change was made," Edwards said. "The preclearance provisions are not changed." This is telling evidence; Edwards worked closely with the Leadership Conference on Civil Rights and led the congressional drive to amend section two. The Senate Judiciary Committee report itself assures Congress that "the proposed amendment to section 2 would only invalidate those election laws where a court finds that discrimination, in fact, has been proved."

Moreover, in the course of the hearings, there was *no* discussion directly on the question of section five, and this in itself is significant. The legislative history of the 1982 amendments is voluminous; among more than 100 witnesses, not one so much as mentioned the need to amend the section five standard. Mr. Still must argue that Congress amended section five without debate—in a deliberative vacuum. Yet as Katherine Butler, in the best comments to date on the new Justice Department section five guidelines, states: "The [section 5] retrogression standard was clear, unambiguous, and well-known to Congress. In light of the extensive revisions to other parts of the Act it is inconceivable that Congress would have left untouched section 5, the very heart of the Act's success to date, if this drastic alteration were intended."

Still's evidence consists of one item: a footnote in the Senate Judiciary Committee report. As Butler argues, "this isolated footnote, lacking support even in the text to which it is appended, can hardly be seen as persuasive. As the Supreme Court [has] noted . . . 'in any case where the legislative hearings and debate are so voluminous, no single statement or excerpt of testimony can be conclusive.' " In fact, the footnote reads, as one analyst has put it, as an "ingenious afterthought"—planted where only the most attentive member of Congress was likely to see it, and at a point at which the vote on section two was a closed question. Its purpose, that is, was to permit future argument for which there was otherwise no basis.

ABIGAIL THERNSTROM
*Cambridge, Massachusetts*

## MISSED COMMUNICATION

*To the editors:*

It is with some despair that I comment on the honest and thoughtful piece coauthored by a fellow social psychologist, Jeff Howard, and Ray Hammond ("Rumors of Inferiority," September 9). My despair arises because Mr. Howard's prescription for the monumental problems he describes is the psychologist's handy cure-all, improved communication. Missing from his analysis is the recognition that, to be effective, communication must be received, and too often the adolescent to whom the communication is intended simply isn't listening. Too often he is caught in the grip of a violent and vicious adolescent street culture that makes listening to adult authority an object of derision, and therefore dangerous. And it is social psychologists like myself and Mr. Howard who over the past 20 years have promulgated and defended theories and prescriptions that have made it just about impossible to gain control over the adolescent street culture that currently ravages the black community.

Until social scientists cease pandering to every black and liberal demagogue who defends street culture and who attacks the authority necessary to bring it under control, things, sadly, will not improve.

BYRON M. ROTH
*Sayville, New York*

## COLLABORATORS ON CAMERA

*To the editors:*

In her brilliant article on Marguerite Duras ("Indochina Mon Amour," September 9), Barbara Probst Solomon rests some of her later argument on the point that "*Hiroshima Mon Amour* was unusual because it was the first French film, with one minor exception, to mention World War II." This would be astonishing if it were true, but it's not. René Clément's first three features, *The Battle of the Rails*, *Le Père tranquille* (both 1946), and *Les Maudits* (1947), Jean-Pierre Melville's *Le Silence de la mer* (1949), Claude Autant-Lara's *Four Bags Full* (*La Traversée de Paris*, 1956), and two secure classics—Clément's *Forbidden Games* (1952) and Robert Bresson's *A Man Escaped* (1956)—are all set during the war and are, on the whole, very much about the war. Just after the war there was a rash of films about the Resistance. Among shorter films there is the great documentary about the concentration camps, *Night and Fog* (1955) by Alain Resnais, the director of *Hiroshima Mon Amour*.

PAUL WARSHOW
*Bolinas, California*

## THE FACTS ABOUT BABY DOE

*To the editors:*

As the mother of a multiply handicapped child and as a medical writer specializing in perinatal issues, I found Charles Krauthammer's article "What to Do About 'Baby Doe' " (September 2) long on arid philosophizing and short on accuracy and compassion.

Mr. Krauthammer refers to the "Indianapolis Baby Doe" as an "easy case." He dismisses the infant's severe congenital anomalies as "an easily correctable digestive problem," and concludes that the parents' refusal of surgery for their son demonstrates that parents can't be trusted with decision-making.

In fact, Baby Doe of *Bloomington*, Indiana, was born lacking a significant portion of his esophagus. What remained of his lower esophagus was connected to his trachea. In addition, the child suffered from birth asphyxia, symptoms suggesting a cardiac defect, and

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THE NEW REPUBLIC
OCTOBER 21, 1985

# GRIEFBUSTERS

We can't prevent earthquakes. But technology and techniques now exist to save lives after such tragedies, and that is why it has been so disturbing to witness trained rescue workers arriving in Mexico City too late to help many trapped in collapsed buildings. Members of a French team complained bitterly that they could have saved dozens, if not hundreds, of additional lives if they had been called to the scene promptly after the disaster struck. By the time Mexican officials got around to requesting their presence two days after the quake, far more of the bodies pulled from the rubble were lifeless.

A week after the first tremor, television was still broadcasting the same desperate images: untrained civilians digging through masses of concrete and twisted steel with garden tools or their own hands; international rescue crews screaming at each other about how to approach the collapsed buildings so as not to finish off those who might have survived. Mexico still lacks the manpower and heavy equipment it needs to unearth bodies and demolish dangerous buildings left partially standing. At first the Mexicans were too proud to ask for help. When they finally admitted their need, they issued an appeal for equipment, not knowing which countries could supply the dogs, cranes, and electronic sensors required to find and extricate the victims.

Confusion, lack of coordination, and costly errors are generally accepted as the natural aftermath of tragedies like the Mexico City earthquake. After the devastating quake that struck Managua in 1972, the Somoza government issued a confused request for aid that resulted in a tremendous duplication of efforts. Nicaragua said it needed two mobile hospitals, which cost $500,000 each. The United States, France, and Cuba all responded to the same distress signal; they sent two extra hospitals, which remained in their cartons. After the Guatemalan earthquake in 1976, pharmacists wasted the first precious weeks trying to make an inventory of drugs shipped by well-meaning but uninformed donors. One hundred tons of medicine eventually had to be buried. No failure so dramatic has occurred in Mexico thus far, perhaps because the government has insisted that it doesn't need food, clothing, or medical help.

Governments and private organizations like the Red Cross know that relief efforts have a tendency to turn into minor disasters themselves. Debate about the failure of relief for the Peruvian earthquake of 1968 and the East Pakistan cyclone of 1970 got world leaders thinking about the problem, and in 1971 the United Nations General Assembly created the United Nations Disaster Relief Office. UNDRO was not intended as another relief agency, but as a clearinghouse that would match the abilities of donor nations to the needs of countries struck by a disaster. In theory, UNDRO would find out exactly what a country like Mexico needed, and arrange for governments and private agencies to provide effective help.

In practice, however, UNDRO is a cumbersome bureaucracy, which further delays the response to urgent requests, if it does anything at all. If a country chooses to proceed through U.N. channels for disaster assistance, it must make a request through the resident representative of the United Nations Disaster Program, a separate but related agency. The resident representative refers the request to the UNDRO office in Geneva, which sends an investigator to assess the needs. UNDRO then goes to its computer to find out what nations or private organizations can help, and issues formal requests for aid to those potential donors. While this finely tuned machine hums and buzzes, evaluating alternative responses, the misery continues. Many U.N. officials and outside evaluators such as the United Nations Association of the United States have criticized UNDRO as ineffectual and too slow. Usually, as in the case of Mexico, nations don't even ask for UNDRO's help. Beleaguered governments choose to go directly to the sources of aid rather than tackle the workings of an independent bureaucracy. When this happens, UNDRO laments that it is prohibited from doing anything but sitting on its hands.

Even when it functions as it is supposed to, UNDRO's ability to cope is extremely limited. Its sponsors envisioned UNDRO directing aid as a policeman directs traf-



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fic—he doesn't tell drivers where to go, he advises them how to get where they are already going. The United Nations act creating the agency mandates that UNDRO cannot supply anything itself (except food under rare circumstances). The organization doesn't own any equipment, and has no trained rescue workers on its payroll. They may know where to find each of these, but the UNDRO technocrats don't dirty their hands in the rubble.

Our own Office of Foreign Disaster Assistance of the Agency for International Development suffers from similar structural limitations. The office can't send Mexico a crane to knock down buildings. Rather, after finding out that Mexico needs a crane, OFDA can see which U.S. department has one and "task" that agency with the response to a specific request. OFDA knows what resources are at its disposal and does a good job of channeling requests rapidly, but its bureaucratic structure inherently slows the response to a crisis in which speed is critical.

The various skills and equipment needed in a disaster are by their nature widely dispersed among the nations of the world. Mexico's quake is an instructive example. The rescue and relief effort still under way includes Israeli demolition experts who received state-of-the-art training in Lebanon, and technicians from the U.S. Bureau of Mines, which has developed sensitive equipment to determine whether trapped coal miners are still breathing. Because it is especially vulnerable to earthquakes, Mexico itself has trained many of the world's foremost seismologists, and has volunteered them in the past to help out in disasters in Central and South America. All of these far-flung experts and tools are needed whenever a major earthquake strikes an urban area. There are similar basic requirements for responding to a flood, a drought, a famine, a cyclone, and a chemical leak.

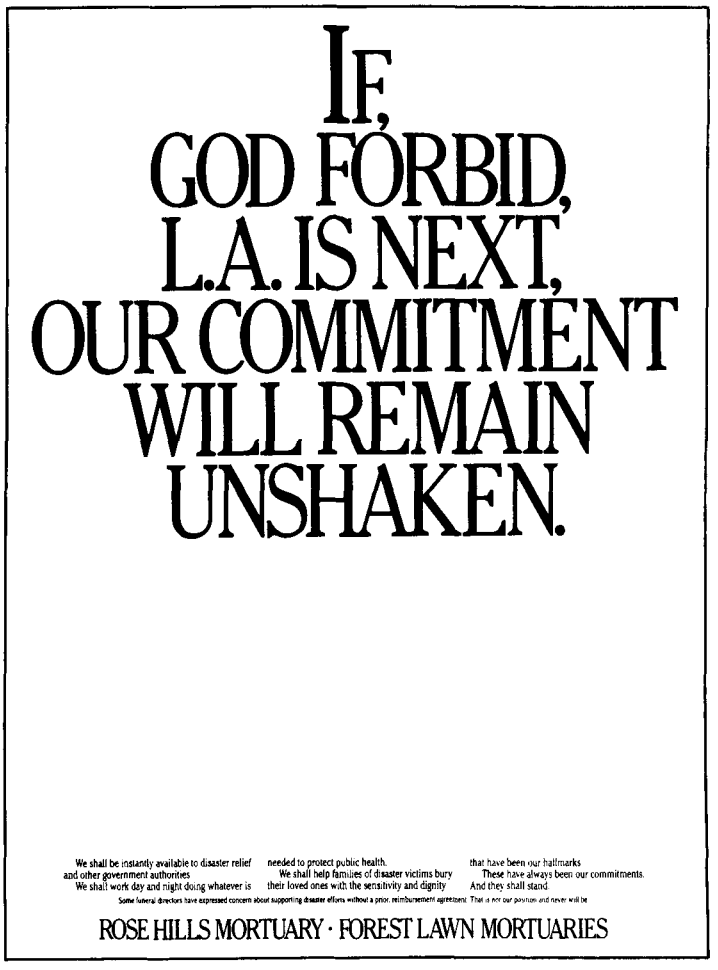
This makes most relief efforts today a little like jigsaw puzzles with pieces missing. And they wouldn't fit together even if the parts were all there. Rescue crews arrive at different times, speak different languages, and usually have no one giving them orders. Even if UNDRO directs the right crews to the right place, there isn't anyone there to tell the demolition experts to wait for rescue workers. This is precisely what happened in Mexico City because French and local teams weren't working together. Logic suggests a better way. The workers and equipment that are always needed in a disaster like an earthquake ought to be deployed as a single team from a central location. One international crew with all the necessary skills could save far more lives than the tragicomic failures we have come to accept as inevitable.

Governments like our own whose foremost concern is helping disaster victims should circumvent the clumsy mechanism of UNDRO. The United States should take the lead in establishing a multinational disaster rapid deployment force, which would stand ready to intervene anywhere in the world at any time. The amount we spend annually on the Office of Foreign Disaster Assistance ($160 million this year) could be better employed as a contribution to a "Griefbusters" force, trained and equipped to respond to natural and manmade disasters. A flexible rapid deployment force would report to a single director. More important, it would know what each kind of disaster called for, and would either possess or have immediate access to the basic required equipment. The force could employ a semi-military structure, with reservists from member nations who could be called up at a moment's notice. It could descend from the skies with the needed tools without having to wait for a formal plea.

This kind of multinational force would be likely to run into trouble with countries that object to having their sovereignty encroached upon. Throughout the current Ethiopian famine, the government has demonstrated that it considers keeping foreigners out more important than saving the lives of its own people. When a nation is simply unwilling to tolerate assistance, there is no practical way for outsiders to help short of military invasion.

But we can and should make it easier for governments to accept disaster assistance. Mexico, which has been too proud to ask for help, gladly receives all that is sent un-

## ANOTHER APPROACH


IF,
GOD FORBID,
L.A. IS NEXT,
OUR COMMITMENT
WILL REMAIN
UNSHAKEN.
We shall be instantly available to disaster relief and other government authorities
We shall work day and night doing whatever is needed to protect public health.
We shall help families of disaster victims bury their loved ones with the sensitivity and dignity that have been our hallmarks
These have always been our commitments.
And they shall stand.
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solicited. If we made a prior agreement with other nations, promising to help each other in case of disaster, the burden would be to refuse aid rather than to ask for it. Were Mexico a party to such an agreement, French rescue workers would have been on their way as soon as they learned of the quake. If an earthquake struck the United States, Mexican technicians would rush here. We might someday need them as much as they need us now. We might also discover that we have similar qualms about "begging." A reciprocal treaty would remove the sting of pride that keeps nations from asking each other for help.

One major objection to a disaster relief force would doubtless be that it would limit its membership to our allies. The failures of United Nations forces around the world ought to demonstrate the need to exclude hostile nations. Foreign aid is essentially political. At one level we may offer our help from "pure" motives, but we hope to win friends and improve our stature in the world as fringe benefits. Hence nations compete to provide the best foreign aid. This impetus seems essential to disaster assistance. Thus the Griefbusters force should be under the political control of the United States and our allies. If the Soviet Union decides to create an Eastern bloc rescue team, no harm will be done. It would be better for the superpowers to compete for the affections of the world with aid to disaster-stricken nations than by supplying arms. The Soviet Union's past failure to provide major disaster assistance indicates, however, that their interest in the field is limited.

The burden of paying for the force wouldn't have to fall exclusively on our shoulders. We could contribute the budget of the OFDA, and convince our European allies to pitch in with the sums they contribute to parallel agencies. The cost should be distributed more equitably among wealthy nations than the NATO budget. We could also ask Japan to bear a disproportionately large share of the burden. Japan spends slightly more than one-tenth per capita what the United States does on our common defense—the nuclear umbrella. As an excuse, they hide behind a clause in the constitution we wrote for them, which prohibits significant military expenditures. But they could have no plausible objection to contributing to lifesaving instead of defense. And it would help bolster Japan's sagging international image.

UNDRO could continue to assist in predicting and preventing disasters and in coordinating long-term redevelopment plans with the U.N. Disaster Program. Griefbusters need not address the larger issues of long-term development; that should remain the province of USAID. The force would simply respond to the immediate imperative of saving as many lives as possible in the wake of a tragedy. If such a crew were around today, we might be listening to Mexico's thanks—instead of its requests for more body bags.

# WHO IS SERIOUS ABOUT ARMS CONTROL?

What you think about the latest Soviet arms control proposal depends on what you think about President Reagan's Strategic Defense Initiative (SDI), or Star Wars. The central arms control question facing the United States is whether Star Wars should be negotiable, and if so for what.

There are two uncertainties about strategic defense. The first is technical: Can such a system be perfected? The best current answer is that strategic defense probably will never be perfected to the point that it can be used to protect populations, but it may someday be able to provide a partial defense, principally for military targets.

The other question is strategic: What are the consequences for nuclear stability of such an imperfect defense? The main reason there's no clear answer to this question is that such a defense will be able to do two contradictory things. First, it will partially defend against a first strike. A first strike that leaves the victim with enough missiles to respond in kind is a failure. A first strike that's more likely to fail is less likely to happen. Thus, deterrence is enhanced. On the other hand, any strategic defense that can partially degrade a first strike would have the same effect on the second (retaliatory) strike. The strategic consequences here are the opposite: if one side loses its capacity for credible retaliation, deterrence evaporates.

Which of these two effects is stronger? A second strike is more likely than a first strike to be disarmed by a partial strategic defense, since it consists of an already crippled force. On the other hand, a second strike does not need to succeed as completely as a first strike in order to fulfill its deterrent function: only a few missiles targeted on cities need to get through to inflict unacceptable destruction on any potential aggressor. Thus, in the dizzying but essential reasoning of nuclear strategy, the effect of strategic defense on deterrence is ambiguous.

The Soviets, however, are less interested in strategic stability than in strategic superiority. For them, both effects of strategic defense are bad news. In the 1970s they invested in a huge first-strike force that can now threaten all of America's land-based missiles and much of our bomber force: two-thirds of the strategic triad. Even a partial strategic defense would make a successful first



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strike impossible and—therefore—the threat of one empty. It would thus close once again the notorious window of vulnerability.

The effect of strategic defense on a second strike is even worse from the Soviet point of view. Degrading their first-strike force reduces the value of an investment. Degrading a second strike, particularly coupled with the continued modernization of U.S. offensive forces (new missiles of high accuracy and heavier payloads), reduces their standing as a superpower. They face the prospect in the 1990s and beyond of looking down the barrel of American strategic superiority.

Hence the somewhat desperate Soviet attempt to block America's progress on strategic defense. The approach has been two-pronged. First has been propaganda: threats; attempts to turn Europe against the idea; and slogans such as "demilitarizing space," "Star Peace," etc. Second: arms control. At Geneva the Soviets have been playing the theme from Star Wars ever since talks resumed last May. Progress on all fronts has been made hostage to an American renunciation of strategic defense.

THE SOVIETS are so alarmed by Reagan's strategic defense plans that they now have proposed nuclear arms reductions as drastic as any ever proposed by an American administration—including the drastic cuts Cyrus Vance proposed in 1977. (This makes it rather unseemly for President Carter to chime in after Gorbachev that Star Wars is "the key obstacle to success" in arms control. His proposed 1977 cuts, like those offered by Reagan at START talks half a decade later, were rejected out of hand by the Soviets. Star Wars is what got their attention.)

What Soviet foreign minister Eduard Shevardnadze has proposed gives the first appearance of a grand compromise: radical reductions in strategic arms in return for strict curbs on strategic defenses. Yet as details of the Soviet offer leak out of Geneva, they become less appealing and less serious. The Soviets have proposed a reduction of 50 percent in nuclear "charges." If that peculiar term is meant to include everything down to short-range air-to-surface missiles (of which there are huge numbers on both sides), a 50-percent reduction needn't mean much.

This makes the important question one of sub-limits on particular types of weapons. There must be some reduction in land-based nuclear weapons. Otherwise, the Soviet first-strike force remains intact, the window remains open, and the strategic balance remains unstable. Early reports had it that the Soviets were going to propose limiting each side's land-based forces to 40 or 50 percent of its total stock of nuclear warheads. That would have left each side with no more than about 2,000 to 2,500 land-based warheads. And *that* would make a successful first strike by either side nearly a mathematical impossibility. But apparently, the Soviet proposal includes no such sub-limit.

The Soviet proposal also appears to ban American long-range cruise missiles and modern American strategic weapons like the MX, Midgetman, the Trident II, and even the Stealth bomber. It would drastically cut American intermediate-range missiles in Europe. Corresponding Soviet weapons (shorter-range cruise missiles, new mobile SS-24 and SS-25 ICBMs, and SS-20s in Europe) would remain in place.

This is a hell of an opening bid for a proposal advertised as a 50 percent cut. Still, the Soviets have made similarly one-sided opening bids at SALT I and II talks, only to improve them over time. They will again, if they're serious. We will know in time.

The most important test of Soviet seriousness is strategic defense. If the Soviets stick to their position that strategic defense research must be banned, then their offer is nothing but pre-summit air. In his *Time* interview, Gorbachev magnanimously permitted basic research: what goes on in people's heads. That gracious concession amounts to nothing. Try to prevent it. By contrast a ban on nonbasic research—involving contracts and demonstrations and models—effectively prevents research in an open society and permits it in a closed one. The Union for Concerned Scientists and *The Washington Post* will see to the work of verification in the United States. Oversight on the other side will be provided by Georgi Arbatov and the Pravda swat team.

If the Soviets are serious and abandon their anti-research position, then the question becomes: Is the United States serious? Is Star Wars a bargaining chip? That is up to Ronald Reagan. Would he like to be remembered as the strategic defense president or the arms control president? By all accounts, he yearns for both. If the Soviets are clever (and serious), he will have to choose between them.

It will not be an easy choice for him. To some extent he is to blame. He oversold strategic defense from the beginning as a way to abolish nuclear weapons. His administration has engaged in a hard sell, both in this country and in Europe, and has persuaded many important players (such as Margaret Thatcher and Helmut Kohl) to support his vision. For Reagan now to declare that all this was, in effect, a device to get the Soviets to come around on arms control would please his critics and leave friends who have taken political risks high and dry. It would not quite be the cataclysm that followed Jimmy Carter's turnaround on the neutron bomb. But it would still register on the alliance Richter scale.

EVEN AS FORCEFUL a European critic of SDI as historian Michael Howard of Oxford argues that it would be inconceivably frivolous for the president now to declare that his program had been a bargaining chip all along. And not even serious critics of SDI think that all strategic defense research should be abandoned. We must at least match Soviet defensive efforts. The main disagreement is over the Reagan program's overblown hopes and overblown budget. If strategic defense is not a bargaining chip, the president's crash program, with its high rhetoric and higher appropriation requests, should be.

This suggests the outline of a potential grand compromise, if both sides wish to be serious:

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(1) Permit strategic defense research to continue, though perhaps with reduced funding. This presents the familiar problem of determining how much the Soviets spend on research, though CIA estimates here are likely to be more reliable than ascertaining whether *anyone* in the Soviet Union is working on, say, neutral particle beam research.

(2) Beyond research, no development of strategic defense that is verifiable by spy satellites ("national technical means").

(3) Drastic cuts (50 percent) in offensive weapons, with severe sub-limits (40 to 50 percent) on land-based warheads.

(4) Parity in Euromissiles and new strategic systems.

(5) Any agreement on strategic defense to be open for review every five years in view of technological developments, just like the 1972 ABM treaty. Both sides would be protected against a "breakout" in strategic defenses by the other side, and yet neither would be advancing at the fever pitch reflected in Reagan's SDI program.

Such a deal will take years. To expect even the outlines before the Reagan-Gorbachev summit, particularly given what we know of the Soviet opening bid at Geneva, is foolish and dangerous. But in theory and in time, a grand compromise may be possible.

## Antiterrorism In Tunis

In a daring and precise 1,500-mile strike, the Israeli air force has destroyed the Palestine Liberation Organization's central headquarters south of Tunis. Far from violating the canons of international order, as its reflexive critics have charged, Israel in fact has acted on behalf of innocent civilians everywhere whose lives have been imperiled for 15 years now by the mobilized rage of international terrorism. When the history of this era of indiscriminate murder is written, the PLO will be seen as the progenitor of this cruel and wanton mode of politics. And the PLO continues to be terrorism's master practitioner. In recent weeks, in Rome and Copenhagen and Cyprus, at sea and on land, and of course within Israel itself, PLO terror has brought death to people who were no one's enemies.

Terrorists cannot be allowed to hide behind the national sovereignty of reckless states that give them hospitality. Jordan should be warned that if, for whatever royal reasons, it indulges Arafat's gunmen, its territory will not be more immune from retaliation than Tunisia's. President Reagan recognized instantly and correctly that Israel's Tunisian raid precisely targeted people responsible for terrorist activities—some successful, some impeded by the Israelis.

There will be Palestinian terror, the world-weary say, as long as there is a Palestinian grievance. But the Palestinian grievance could have been satisfied long ago if the Palestinian leadership could entertain even the notion of compromise. This historically it has not been able to do; this, really, it still cannot bring itself to do. That is why every opportunity for a negotiation between Israel and its neighbors, or between Israel and the people of the territories lost by the Arabs in the 1967 war they started, is sabotaged by the familiar but anonymous men with masks.

## Notebook

□ INITIAL NOTE: Last week's Los Angeles Diarist, initials "M.K.," was not editor Michael Kinsley or contributing editor Morton Kondracke. Nor was it any of our occasional contributors Marvin Kalb, Milan Kundera, Madeline Kahn, Melanie Klein, J. Maynard Keynes, Maynard G. Krebs, Meir Kahane, Ruhollah "Madman" Khomeini, or Mr. Henry Kissinger. The author was our West Coast correspondent, Mickey Kaus. Our apologies to all those who are disappointed to learn that Morton Kondracke has not contemplated running for office.

□ COMPARABLE WORTH: Who says the South African government doesn't want to provide economic opportunity to blacks? William Keyes, 32, black, was a domestic policy adviser in the White House until this summer, when he quit to form International Public Affairs Consultants, Inc. Now he has been hired for $360,000 a year plus $30,000 expenses as a lobbyist for South Africa. On the other hand, Keyes may have a good employment-discrimination lawsuit on his hands: John Sears, white, Reagan's former campaign manager, gets $500,000 from the South Africans.

### White House Watch

## Gorbachev Envy

IMAGINE this hypothetical case, says a top administration official. The United States has recklessly deployed 120,000 combat troops in a formerly neutral country and is fighting a bloody war against a ragtag indigenous opposition. Worse yet, American troops are relying on heavy metal—planes, tanks, artillery—to crush the underequipped locals. What's more, we stand accused of using lethal chemical weapons and carrying out a policy of genocide. "We'd certainly be hearing about this in conjunction with the summit," the official says. "We'd be hearing about it every day. It would be the number one item on the summit agenda."

This case isn't as farfetched as it might seem. There is, of course, a U.S.-Soviet summit scheduled for Geneva a week before Thanksgiving. Substitute the Soviets for the Americans and you have the Soviet military intervention in Afghanistan. But as the official was pointing out, Soviet imperialism is far from heading the summit agenda. Arms


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control is number one. And given President Reagan's insistence on pursuing Star Wars, this leaves Soviet leader Mikhail Gorbachev the attractive option of blaming Reagan if, as expected, the one-on-one session in Geneva fails to produce tangible progress toward a new arms agreement. So what if Gorbachev won't budge on Afghanistan? the official says caustically. No one will be paying any attention to that.

FEAR AND LOATHING is now the prevalent administration attitude toward the summit. This used to be limited to hard-liners like assistant defense secretaries Fred Iklé and Richard Perle. Now summit jitters have spread from the Pentagon to the White House staff, the National Security Council, the Arms Control and Disarmament Agency, and the State Department (a few political appointees at State, at any rate). "The president can't get any pluses out of the summit," says a senior White House aide. "The best he can do is break even. And everything has to break right from now on for that to happen. Above all, he's got to capture the agenda public-affairs-wise."

Practically no one in the administration thinks this is still possible, though the White House has brought in a special flack from the U.S. Embassy in London, Bud Kornegold, to handle PR. "The Soviets have been able to set the agenda as arms control, arms control, arms control," says a Reagan adviser. "They would never allow a Sakharov summit. They would never allow an Afghanistan summit. But we have allowed them to have an SDI summit. The only question has become what Ronald Reagan gives up to make it a successful summit."

Reagan has only himself, his wife, Nancy, and Secretary of State George Shultz to blame. He's been warned repeatedly by officials such as Kenneth Adelman, the director of the arms control agency, to downplay arms control as a summit item and to inject other issues. Afghanistan, human rights, Jewish emigration, Soviet violations of prior arms agreements, anything. Yet Reagan hasn't done that. Nor has Shultz. When Shultz and Eduard Shevardnadze, the Soviet foreign minister, conferred for nearly five hours in New York in late September, all they discussed was arms control. Two days later Shevardnadze came to the White House to chat with Reagan for two-and-a-half hours. Again, the only issue on the table was arms control.

What's wrong with the concentration on arms control? For one thing, it's the single item on which the United States and the Soviet Union have reached a kind of moral parity: each side has a nuclear arsenal large enough to obliterate mankind. If Afghanistan or virtually anything else were the chief issue, there would be no moral equivalence. Arms control is the only issue where the U.S. has something to give up. Furthermore, it's the issue on which the Soviets can influence Congress, the American public, and American allies in Europe. When the Soviets propose a 50 percent reduction in nuclear weapons, however illusory or one-sided that proposal may be, Europeans and Americans expect Reagan to respond with a serious counteroffer. But the Soviets will claim he's not serious unless he agrees to abandon Star Wars.

One worry inside the administration is that Nancy Reagan will urge her husband to make rash concessions in hopes of securing a historic arms control agreement with the Soviets. She insists she has no overriding interest in the way history rates President Reagan, but White House officials contradict this. "She's fascinated with this peace thing," says a White House aide who knows her well. "The only thing he can accomplish in the last three years to set himself apart from others presidents is a big arms agreement," the aide says. "This would be the kind of big movie star happy ending Nancy likes."

But what about Reagan? In his press conference on September 17, he ruled out any limits on research or testing of the missile defense system. Deployment is something else again; Reagan says he's willing to talk about that when the time comes. In August 1984 he personally pleaded with Senator Jesse Helms, Representative Marjorie Holt, and Phyllis Schlafly in separate phone conversations to leave a call for deployment of Star Wars out of the Republican platform. They reluctantly acceded. As for the question of how history will treat his presidency, he doesn't seem to share Mrs. Reagan's concern. In a conversation with a White House official recently, he said simply, "It'll get distorted. Besides, I won't be around to read it."

The hard-line lobby in Washington is taking no chances concerning Reagan's steadfastness on Star Wars. It is campaigning to create an entirely new agenda for the summit, one which Reagan cannot ignore. Naturally, this agenda is harshly anti-Soviet—arms pact violations, Jewish issues, human rights, emigration of Baptists, even the Soviet role in Angola. To answer any Soviet failure to address these issues, Reagan will be urged to take "proportionate response" by ordering the B-1 bomber assembly line to continue past 1988, putting a stop to the decommissioning of Poseidon nuclear submarines, etc. This effort is not as foolish as it sounds. The aim is to overload the agenda to make sure nothing is accomplished—and thus, nothing is given up—at Geneva.

AMONG THOSE masterminding the hard-line campaign is the secretive Madison Group, a collection of several dozen conservatives who worked together on Capitol Hill. Many of them now have jobs in the Reagan administration, particularly at the National Security Council and Defense Department. The first shot in the campaign was an October 1 letter to Reagan from eight Republican senators, including Reagan's chum, Paul Laxalt of Nevada. One of its authors calls it a "Rambo letter." It urges Reagan "to raise yet again the 32 presidentially reported or confirmed Soviet [arms control treaty] violations with Soviet General Secretary Gorbachev." And it cites several portentous comments Gorbachev made in the *Time* interview as "explicit, extremely dangerous nuclear blackmail threats from the top Soviet leader himself."

The senators also want Reagan to hasten the completion of a new Defense Department study, conducted by Richard Perle, on Soviet violations. It is due November 15, four

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days before the summit opens. This is probably too late to play a part in shaping Reagan's approach to the summit. Thus the push to get the report to him earlier. Moreover, the hard-line crowd is eager for Defense Secretary Caspar Weinberger to accompany Reagan to Geneva. He isn't slated to make the trip, but he's willing. A Weinberger aide noted that it isn't unusual for a defense secretary to attend a summit. Robert McNamara went with President Johnson to Glassboro, New Jersey, in 1967, and Harold Brown accompanied President Carter to Vienna in 1979, he said. Not surprisingly, Shultz would prefer that Weinberger stay behind.

As for cosmetics, the hard-liners couldn't care less. They are eager to block concessions by Reagan, and public relations takes a backseat. The White House doesn't have this luxury. It has concluded painfully that, since no arms treaty is likely, Gorbachev will win the summit public relations battle at least as far as Europe is concerned. "We only have to play to one audience, the American people," argues one presidential aide. To this end, the White House is ardently seeking to lower public expectations of any breakthrough at Geneva. "Not feasible" and "unrealistic" is the way a senior administration official characterized the prospects for a summit arms agreement in a press briefing September 26.

Still, where Reagan is concerned, the underlings always hope for a miracle. In this case, they don't yearn for an arms agreement. They yearn for a stroke of Reagan genius in which he disarms his foe and charms the press. He's done it in the past: his one-liner in the second presidential debate a year ago about the age issue--"I am not going to exploit, for political purposes, my opponent's youth and inexperience"—comes to mind. One senior official recalled a story that Reagan used to tell about a mediocre football player who somehow became great when challenged on the field. "Reagan's just like that," the official says. "He's mediocre in so many things. When he's challenged, he's sensational." Not always, though.

**FRED BARNES**

The party's over for Saudi Arabia.

# AFTER OPEC

THE KINGDOM of Saudi Arabia is in a fix, financially and politically. For the past 12 years it has been the linchpin of the oil cartel, the 25-year-old Organization of Petroleum Exporting Countries. In order to survive, it may now be forced to cast off OPEC and go its own way.

The reason for the crisis is the precipitous decline in Saudi oil income, from $110 billion in 1980 to $25 billion in 1985 (even less if the depreciation of the dollar is taken into account). The cause of the decline is the 1979-80 tripling of prices from $12 to $36 a barrel. The bonanza proved to be short-lived, but it has created a long-term problem for Saudi Arabia and other Arab countries that have large oil reserves. The price jump spawned a massive effort of conservation and fuel switching that has cut world oil consumption, created a glut, and led Riyadh to reduce its oil production from over ten million barrels per day to 2.5 mbd. Even this huge cut, and smaller cuts by other OPEC members, have not been able to stem the slide in oil prices, now down to about $26 a barrel, and still falling.

AS OIL INCOME rose from $36 billion in 1977-78, the Saudi budget climbed as well. The annual deficit is now about $20 billion. With financial reserves reputed to be about $100 billion—and not all of them liquid—the outlook is not bright. Cutting government expenditures to fit income is painful and can even be hazardous. Raising oil production to increase income could also turn out to be risky. If Riyadh doubles production to five mbd, it would lower the price to below $20 and cause serious problems for all other oil producers—including Iran, Iraq, and Egypt, all of them powerful neighbors.

This dilemma has been evident ever since the 1980 price rise, but the Saudis have been lucky. Their major threat in the gulf has been Iran; in the Arab world their rival has been Iraq. For five years, however, these two nations have been locked in an exhausting conflict brought on by the ill-advised decision of Saddam Hussein, Iraq's dictator, to invade Iran's oil region. The conflict has been prolonged by the stubbornness of the Ayatollah Khomeini, who is literally demanding Hussein's head as his price for peace.

Yet from the point of view of Saudi Arabia and the other Arab gulf states (Kuwait, Qatar, Bahrein, and the United Arab Emirates), the war has produced a double bonus: it has removed an imminent military threat (Iraq has long claimed part of Kuwait or even all of it); and it has drastically cut oil exports from Iran and Iraq, allowing other OPEC members to sell more oil. Unfortunately, Saudi Arabia and Kuwait have been forced into multibillion-dollar subsidies of Iraq to enable it to withstand Iran's counterassault.

The establishment of the state of Israel has worked to Riyadh's advantage. Arab radicals and others who might have attacked Saudi Arabia in an effort to take over the oil wealth of the Arab peninsula have focused their aggression instead on Israel. There is no reason to doubt Riyadh's opposition to Zionism, often coupled with crude anti-Semitism, but it has been said that if Israel did not exist, Saudi Arabia would have had to invent it.

In the mid-1960s Gamal Abdel Nasser, supported by Soviet Russia, had his troops in Yemen in the southern tip of the Arabian peninsula. There is firm evidence that he was using poison gas in an effort to subdue the tribes. Riyadh, in the meantime, was supporting the royalists in North Yemen with indifferent success. Nasser disappeared as a threat to Saudi Arabia after Israel defeated his armed forces in the Six-Day War of 1967.


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By 1973, when Egypt had recovered its strength and Syria had become a major military power (thanks to Soviet arms and Saudi financial support), Israel repeated its 1967 performance—although at much greater cost. In the interim and after, Israel dealt with the PLO and assorted radical groups, mostly financed by Saudi Arabia. It is clear from the PLO's war matériel captured in the Lebanon operation in 1982 that it had received generous funds from the Saudis, which it had used to buy Soviet arms.

The existence of Israel thus has enabled Riyadh to deflect intra-Arab threats by playing the role of a "moderate" in Western eyes while supporting the radical states opposed to Egypt and Jordan's making peace with Israel. More important, by using a relatively small part of its oil income, Riyadh has removed from the agenda the question of who owns Arabian oil resources: ruling families, nations set up mostly by Western governments, or the whole Arab entity. If there is really an Arab nation, some Arabs believe, then the oil should be looked at as an Arab or even Islamic patrimony. In this respect, Libya's Muammar al-Qaddafi has been quite forthright, using his oil wealth for what he declares to be Arab and Islamic objectives, including terrorism against the West.

But Riyadh's luck is running out. Iraq is exporting more oil, an extra one mbd by 1986, and will want to maintain its quota in spite of the falling need for OPEC oil. Khomeini is exporting both oil and subversion. He is helped by the fact that the Arab population of the gulf oil region is mostly Shiite. The recent assassination attempt on Kuwait's ruler by Shiite terrorists may be a preview of things to come.

Syria looms as a possible threat—politically and as an oil exporter. Hafez al-Assad is not likely to attack Saudi Arabia; Iraq is a much more tempting target. But Syria, as the region's strongest military power and the training base for Shiite terrorists, may extract what it wants by blackmail and threats. A recent oil discovery at Deir ez Zor means that Syria will soon join the ranks of oil exporters.

STILL, the foreign threats pale beside the domestic one: the deficit. Saudi Arabia's fourth Five-Year Plan (1985-90), issued in March 1985, may already be out of date. It evidently envisions an annual oil income of about $50 billion, based on a production of five mbd and a price of about $30. But with current production of 2.5 mbd and falling prices, the average annual oil income over the next five years may be more like $20 billion to $25 billion.

Some of Riyadh's ambitious development projects in areas such as education, agriculture and industry, health, and housing, are likely to be stretched out. Many capital projects are likely to be canceled, once revenues are factored in. The current budget (March 1985-86) is thought to be $75 billion (including military expenditures of $17 billion). It probably does not include "foreign aid," the so-called loans to Iraq and other Arab groups. With investment income at perhaps ten billion dollars and only minor tax income, oil income is by far the largest planned source of revenues—and it may be off by 50 percent. Clearly expenditures will have to be cut and revenues enhanced.

Of course, budget cuts can be hazardous to the regime in power. We have witnessed demonstrations elsewhere, in Egypt and even in Israel, when the government tried to reduce subsidies or tampered in some way with the standard of living. In the Saudi case, expectations have been built up for a wider distribution of the oil wealth, and there will be great disappointment for the merchant class, technocrats, and military who haven't yet gotten their share. The distribution of oil wealth in Saudi Arabia has been based on the original trickle-down mechanism: subsidies, and commissions paid whenever the government spends money. This may be a reason for keeping arms purchases high. It will be important for the government to demonstrate that the burden is spread equitably. Will it try taxation on a large scale to pay for social programs?

The key to avoiding a crisis may lie in attracting private capital to invest in Saudi development projects. That is the main theme of the Fourth Development Plan, which devotes much attention to providing incentives to investors. There is no doubt about the huge oil wealth held by private Saudis, not only by members of the royal family. But it is not certain that these Saudis can be persuaded to invest and demonstrate their faith in the viability of the kingdom.

IN THE PAST, Riyadh has been able to obtain outside investments, mainly from foreign oil companies, by promising them access to oil. But as these companies have belatedly discovered, oil can always be obtained, without making any special concessions, by paying the market price. Mobil and Shell have invested in Saudi oil refineries designed to export oil products, only to find that they are uneconomical because of high maintenance and operation costs, and high transport costs of products to European markets. Many other development projects may turn out to be white elephants—hardly a way to attract new investors.

Any realistic appraisal of Saudi Arabia's financial prospects for the next several years would give only moderate weight to budget cutting without causing social unrest, and little weight to harnessing private Saudi wealth to the kingdom's development. The planned elimination of foreign workers would save up to five billion dollars per year, but with serious repercussions in Yemen and Egypt, which depend heavily on remittances from citizens working in Saudi Arabia. Taxation, whether on income, wealth, foreign travel, or imports, has its limits. At best, these measures would only prolong the period before financial reserves are exhausted.

It is not possible to state categorically that financial reserves will disappear by a certain date. There are too many uncertainties about the actual rate of expenditures in the next five years. As regards the liquidity of the Saudi reserves, one suspects that a large percentage of the remaining $100 billion is tied up in investments or in loans that cannot be readily turned into cash. But it is not necessary

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to be precise. A continuing deficit that spells an exhaustion of reserves could have damaging political consequences to the Saudi regime if it is perceived to be weakening or losing its hold.

A drastic change in policy is required. Saudi Arabia has been willing over the last five years to act as the swing producer for OPEC. Riyadh has unilaterally reduced its oil production from over ten mbd to 2.5 mbd in order to defend the oil price jump of 1979-80. It should have been immediately apparent that this price of over $30 was too high and would lead to large-scale substitutions by cheaper fuels. The drop in oil use has been the major cause of the glut and the weakening in price. Saudi Arabia's production cuts have only delayed the inevitable price drop, and made money for other oil producers, including those in the United States.

Now the Saudis must follow a new course: increase production, letting the price fall if necessary below $20 a barrel in order to maximize their own long-term profit stream. This may mean a break with most of OPEC. It will certainly displease other producers—among them Iran, Iraq, Egypt, and Syria. The gulf sheikhdoms, now allied with Saudi Arabia in the Gulf Cooperation Council, may join since they have similar long-term interests—or they may abandon Riyadh.

The choices facing the Saudi rulers are either unpleasant or dangerous. But they have shown themselves to be survivors in the past and may yet find a way out of their difficulties. There is probably little the West can do or should do. And even if there is a change in regime, the new rulers in all likelihood will continue to sell oil to the world market.

**S. FRED SINGER**

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The importance of being tolerant.

# CHURCH-STATE BARGAIN

THE DISPUTE over the Supreme Court's recent decision declaring unconstitutional the arrangements for providing remedial instruction to poor children in nonpublic schools in Grand Rapids and New York, and Alabama's "moment of silence," has ignored one important thing: the Court has taken too high a ground in considering concrete problems affecting thousands of school districts and hundreds of thousands of children. The issue is not the relationship between religion and democracy, requiring us to go back to Spinoza and Locke for the principles that led to the proper separation of individual conscience from state power. Nor is it the question of whether atheists or agnostics can be deprived of rights in the United States because of their religious (or antireligious) beliefs. Both are central issues in the history of liberty, but they have been settled here for a long time.

WHAT IS NOT yet settled, as the Supreme Court decisions reveal, are two other issues: What weight is the Court willing to give to compromises worked out by the political branches in their efforts to deal with diversity of religion in this country? And what degree of tolerance are we willing to give to religion when it impinges, even very tangentially, on public life?

The first issue was addressed by Title I of the Elementary and Secondary Education Act of 1965, a grand political compromise settling a 20-year-old conflict over federal aid to local public schools. This aid, which most acknowledged was desirable at a time when the numbers of schoolchildren were growing rapidly, and when school districts were trying to recover from the ravages of the Depression and the backlog of repairs and building created by the war, was held up by two concerns. One was how federal school aid could go to the segregated schools of the South. The Civil Rights Act of 1964 settled that, for it gave hope that the segregation declared unconstitutional by the Supreme Court in 1954 would now, with the help of Congress and the executive branch, be brought to an end. The second concern was trickier. One out of eight American grade-school children attend nonpublic schools, the great majority of which are religious. If aid were extended to them, the Supreme Court would very likely condemn it as unconstitutional on the grounds of the establishment clause of the First Amendment ("Congress shall make no law respecting an establishment of religion. . . ."). But if the nonpublic schools were excluded, Catholics, the dominant element in nonpublic education, would ensure that the legislation did not pass.

A compromise was worked out. Federal aid to public schools would be primarily for the purpose of assisting poor children, but would go to nonpublic schools as well as public schools administered by local districts. The mechanism devised in New York City, under which 20,000 children in the nonpublic (primarily Catholic) schools get Title I aid, and which has been in effect since 1966, is described in Justice Brennan's majority decision:

> Since 1966, the City of New York has provided instructional services funded by Title I to parochial school students on the premises of premises of parochial schools. Of those students eligible to receive funds in 1981-1982, 13.2% were enrolled in private schools. Of that group, 84% were enrolled in schools affiliated with the Roman Catholic Archdiocese of New York and the Diocese of Brooklyn and 8% were enrolled in Hebrew Schools. . . . The programs conducted at these schools include remedial reading, reading skills, remedial mathematics,



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English as a second language, and guidance services. The programs are carried out by regular employees of the public schools . . . who have volunteered to teach in the parochial schools.

The instructors are supervised by field personnel, who attempt to pay at least one unannounced visit a month. The teachers are informed that contact with private school personnel should be kept to a minimum. The administrators of the parochial schools are required to clear the classrooms used by public school personnel of all religious symbols.

Many of the children in these programs are black and not Catholic (and do not attend religious schools because they are Catholic, but because they have a reputation for being serious and disciplined). What's more, three-quarters of the public school teachers who provide Title I services in the private schools do not share the religious affiliation of the schools they teach in.

The program's success is evident: it was expressly designed to help poor children and children who do poorly in school, and has done just that; and unlike many anti-poverty programs launched in the mid-1960s, it has survived with general acceptance, unchallenged even by the Reagan administration. But the five-man majority of the Court was not satisfied that it escaped "entanglement" with religion.

What is the alternative? It is time-consuming for children to shift to public schools for these services. Just how they can be delivered, if at all, is a question: it seems that mobile classrooms adjacent to parochial schools are the chief alternative suggestion!

Many parents and scholars are impressed with how well parochial schools have done with poor children in the past, and how well they do with them now. The issue of how parents who pay for private education may get some benefit from the taxes they pay to support public education is an old one, and states and local school districts have again and again devised compromises, most of which the Supreme Court has struck down on the basis of its interpretation of the establishment clause. Yet these are questions of policy and politics on which the Court is ruling, which are distantly if at all related to the words and meaning of the Constitution.

TO UNDERSTAND the storm of opposition aroused by the recent Supreme Court decisions, we have to understand this situation on the ground. But of course, the argument goes, more is involved. Perhaps the Republic's freedom from establishment is not endangered by the New York program, but look at what else is going on: the Moral Majority, the president's support for prayer in the schools, the references to the Judeo-Christian, or indeed Christian, roots of the Republic. The fence around the law must be built far out: and if the black and Hispanic children in parochial schools are deprived of federally supported remedial programs, so be it.

If indeed we were moving in the direction of state-sanctioned religion, there would be cause for alarm. Most of us do not want to live in a country in which morality or religion is dictated by fundamentalists using state power—or anyone else. But is that what they want, or what they intend, or anything that is within their power?

AND HERE the second issue comes in and the Supreme Court decision is relevant: the *Jaffree* case, dealing with Alabama's "moment of silence." The statute in question reads: "At the commencement of the first class each day in all grades in all public schools, the teacher in charge . . . may announce that a period of silence not to exceed one minute in duration shall be observed for meditation or voluntary prayer, and during any such period no other activities shall be engaged in." A silly statute, and it was passed as a paltry substitute for opening prayers or readings from the Bible, which have been struck down by the Court. A few years ago President Reagan proposed a constitutional amendment that stated, "Nothing in this Constitution shall be construed to prohibit individual or group prayers in public schools or other public institutions. No person shall be required by the United States or by any state to participate in prayer." This amendment, hardly likely to be acted upon, represents the furthest reach of the present tide of state religion.

What are we to make of all this? One interpretation is that the Supreme Court, bravely standing against a host of critics, reads correctly the intent of the Constitution, and defends freedom of thought against an impassioned mob of governors, senators, and the rest. I am skeptical, and believe that the majority of the Court misreads the role of religion in the United States, and is undermining in this area (as in others, including school desegregation, pornography, and abortion) the ability of the small communities that make up the great Republic to maintain their values and their cultures. Thus, for example, in decisions on desegregation, the ability of communities, black or white, Asian or Hispanic, to maintain a neighborhood school is overridden by what is termed a constitutional mandate to distribute children on the basis of race or ethnicity through a large school district.

I am not arguing for the substance of the positions the majority of the Court has overridden. On substance, I agree with the Court on most of its decisions. Nor am I simply arguing on the basis of my understanding of the Constitution and the limits it imposes on the courts. I am arguing on the basis of what is necessary to hold together without great strain and fierce conflict a nation of diverse religions and diverse degrees of religious faith, of different races and different peoples. These faiths and communities and associations seek to maintain their religions, their cultures, their languages. We understand well the difference between a private role in so doing, and a public one. But it is impossible to draw too neat or sharp a line between them. When the Court decides that a Christmas crèche can be displayed on public property, I see no threat of the establishment of religion. The fact

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is that about 95 percent of the country is Christian, by birth or practice. That this should find some expression in public life seems not unreasonable. And many forms of this expression, while challenged, have been accepted by the Court (prayers to open Congress, for example). As we have become more varied in religion, and more tolerant, we extend public recognition to other religions. Thus, if there were a substantial number of Jews in a community, we would not be surprised if an oversized Hanukkah menorah were placed on the same public plot. Nor, if it occurred, would that be an "establishment" of Judaism.

The arguments over Bible reading and prayer in the schools were not arguments over the establishment of religion. By the 1960s we dealt with the merest echoes or fragments of the establishment of religion. The only meaningful argument was that some children might be embarrassed by listening to the Bible or hearing the prayers. Having listened to the readings and heard the prayers, at a time when the Supreme Court did not stand so sternly against establishment, I didn't see the harm in being silent, or in learning that one is different—because one is a Jew, or a Catholic, or an atheist.

A country such as ours can be held together only by tolerance and by deals. The Elementary and Secondary Education Act of 1965 was such a deal, and I cannot imagine who was being hurt by it. It takes a kind of absolutism to go after the New York City arrangement, as it does to go after the Alabama bill. I do not know how far the Evangelicals and fundamentalists are willing to go to press their points. When the Evangelicals and fundamentalists try to require "equal time" for creationism by state law, they should be fought. Some kind of balance is necessary in these situations, and we cannot count on balance from the litigants. Because it is very easy to raise a constitutional issue in this country, we will have such cases raised again and again. When they are raised, it is up to the federal courts and the Supreme Court to maintain a fair measure of tolerance. In these cases, I use a simple test: Who is it that is being intolerant?

**NATHAN GLAZER**

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When they work and when they don't.

# SANCTIONS FOR BEGINNERS

## BY GREGORY A. FOSSEDAL

THIS MUCH CAN be said for economic sanctions: they produce bipartisan behavior. Members of both political parties issue passionate, hypocritical, and often contradictory statements about them. Both Republican and Democratic administrations use them on some countries, dismiss them as ineffective against others. Thus George Ball, a chief spokesman for the Kennedy administration's program of sanctions against Cuba, wrote a cover article for *The New York Times Magazine* three years ago denouncing Ronald Reagan's cutoff of technology for the Soviet gas pipeline as "catastrophe." In one week in December 1982, Daniel Patrick Moynihan called for sanctions against the pipeline, then, days later, told the "Today" show that the sanctions would "have little impact" and complained that "the United States should have gone to the United Nations" first. Ronald Reagan, who believes sanctions would only hurt blacks in South Africa, has continued them against Cuba (where they only hurt Castro?) and enacted them against Nicaragua.

This is a great misfortune for U.S. foreign policy. The United States alone produces perhaps twice as much as the Soviet Union and the entire Warsaw Pact. Add in Japan and Western Europe, and the Western democracies control two-thirds to three-quarters of the world's output. When intelligent people cannot agree whether Sanction A will produce result X—or whether it will produce result Y, Z, or even the precise opposite of X—a potentially effective tool sits unused, or worse, is used ineptly.

Do sanctions work? As with many such issues, the question hinges on what we mean by "work."

Consider, for example, the Arab oil embargo against the United States and some of Europe. On one level, the embargo was a colossal failure. Few people in the United States froze to death or had to quit their jobs because they

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could no longer drive cars. Nor did the embargo succeed in its professed objective of forcing Israel to withdraw from lands occupied in the 1967 war.

Yet the Arab oil embargo was clearly a political and economic success. Gas lines and unemployment fueled by the energy crisis helped bring down three consecutive presidents: Nixon, Ford, and Carter. Many European countries, far more dependent on Arab oil than the United States was, became anti-Israel in rhetoric and policy. In the Middle East, PLO sympathizers such as Assad and Qaddafi were strengthened by the demonstration of radical Arab muscle, while "moderate" leaders faced greater pressures at home—and saw a weaker U.S. and Western Europe available to help them resist those pressures. All of these developments had something to do with the growing economic clout of the oil producers, brought on in part by the embargo.

HISTORICALLY, the Arab embargo is no isolated example. Economic pressure against Germany and Japan first helped bring America into World War II—the "hinge of fate" as Churchill called it—and then helped win it. And even though such countries as Switzerland continued trading with Nazi Germany well into 1945, the Allies' sanctions, coordinated by Dean Acheson, helped deprive Hitler of supplies (petroleum, ball bearings, iron ore, and some industrial diamonds) that might have substantially lengthened the war.

In spite of these and other successes, "sanction" remains a dirty word, a foreign policy lever regarded with suspicion by liberals and conservatives alike. One reason is that nobody has studied the issue very systematically. Of two prominent books that examine sanctions, one, by Robin Renwick, is well-written and thoughtful but modest in scope, evaluating only half a dozen sanction episodes. The other, by Gary Hufbauer and Jeffrey Schott, is extremely broad, with case abstracts of 83 sanctions in this century and dozens of footnotes in each case study. But it consists largely of paste-and-clip assessments taken from other sources, and attempts to establish ludicrously precise estimates such as "per capita" harm of sanctions "as a share of domestic GNP."

Perhaps the chief problem, though, is three understandable, but damaging, conceptual errors.

The first involves a misapplication of free trade theory. Free trade theory argues (correctly, in my view) that all nations benefit from free trade, concentrating on production of goods in which they enjoy the greatest comparative advantage. Notice, however, what this theory does not argue: that all countries gain equally from free trade. Yet this is precisely what some analysts twist it to mean when they argue that a cutoff of, say, U.S. computer technology will hurt the U.S. by damaging its computer industry. Of course this is a cost of the sanction. The question for policymakers is whether the U.S. will suffer more from this lost revenue than the country we wish to punish will suffer from losing our computers. On these relative costs, free trade doctrine is silent.

Consider a simple two-family economy involving Smith and Jones. Smith trades Jones bananas that grow in his backyard—which, by the way, are Jones's favorite fruit. In exchange, Jones gives Smith insulin, which Smith needs to survive. Both families gain; both are happy. One day, Jones sees Mr. Smith beating Mrs. Smith. After repeated efforts to persuade Smith to cease this human rights violation, Jones decides to go the sanction route, cutting off all insulin trade to Smith. Smith retaliates by refusing to sell any bananas to Jones, forcing him to give up his favorite fruit and survive on wild nuts. Both families, in line with free trade theory, will suffer. But Smith may die, and Mr. Jones's sanctions have a good chance of working.

The second error is the notion that the "fungible market" will render any trade sanction useless: the old someone-else-will-sell-it-to-them-anyway argument. Though this contradicts argument one, it is often raised in the same breath. The problem is that there are few fungible markets. In practice, even the most "fungible" commodities—including grain, oil, and gold—may be dominated by a small number of producers who can greatly influence the market price. Then too, people who talk about a fungible "market" often misunderstand the nature of a market, ignoring subtle costs and differences in production. Under the Carter embargo, the Soviets were able to buy much more "grain" from Argentina and Canada. But they could not make up critical shortfalls in feed-quality grains—thus suffering a drastic meat shortage in 1979 and 1980 that helped spark the Solidarity uprising in Poland, according to an economic analysis performed by the Department of Agriculture. In our Smith-Jones analogy, it is as if Smith can buy insulin elsewhere—but only by walking several miles each morning, giving up more bananas, and dealing with a factory that often shuts down.

A FINAL CONFUSION in the sanction debate is a political one—perhaps the most difficult of all to address. Many oppose a given sanction because it is bound to inflict pain largely on the people of a country rather than on their elites. Ronald Reagan complains that sanctions against South Africa will "mostly damage the people we want to help"; Senator Patrick Leahy, questioning Reagan's pipeline action, objected that it would "hurt the Poles" in Poland. Whether a sanction really works may come down to whether this pain on the people will in turn cause them to inflict pain on the government. The countries where sanctions are most likely to work politically, then, are the countries on which we are least likely to impose sanctions. Ultimately, "this argument would imply that sanctions should be used only against democratic states," as Harvard's Nick Eberstadt puts it.

The criterion of Reagan and Leahy is too narrow. What is needed to evaluate a sanction's efficacy is a close look at Smith: What sort of adversary is he? What sort of pressures is he subject to? It seems to me we can consider the

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world in terms of four different types of "Smiths": strong enemies, weak enemies, strong friends, and weak friends. Looking at these four different groups, one finds that economic pressure has achieved notable policy results against all four. But the potential for success is particularly great against the kind of smaller, quasi-allies mentioned above—including South Africa.

*SANCTIONS against the Soviets:* Probably the toughest sanction imposed against the Soviets in recent years was the much-maligned Carter grain embargo. (See "Punishing Russia" by Mikhail Bernstam and Seymour Martin Lipset, August 5.) During the years the Carter embargo remained in force, the Department of Agriculture study estimates, the Soviets lost more than six million tons of grain.

Some concede that the Carter embargo was successful economically, but not politically. The embargo was a response to the Soviet invasion of Afghanistan; on this level, it failed. But surely Afghanistan is no worse off than it would have been without some sanctions. And it is arguably much better off, thanks to the weak Soviet economy and the economic pressure caused by the deteriorating situation of other Soviet allies around the globe, from Ethiopia to Angola to Nicaragua. Major sanctions against the Soviets, in response to major offenses such as the invasion of a country, are never likely to produce an overt capitulation. "It is not within the power of the West to bring the Soviet economy to its knees," as Richard Pipes said in January 1983. "What one can and ought to strive for is compelling the Soviet regime to bear the consequences of its own priorities."

*Sanctions against allies*: The most notable example of U.S. sanctions against Western Europe came in the 1956 Suez crisis. One can argue about whether the objective of the sanctions was wise. One cannot argue about their impact: the British and French rapidly withdrew from the Sinai in response to U.S. restrictions on oil deliveries and trade credits to France and Britain. In a general sense, it stands to reason that sanctions against allies are likely to have more impact; allies generally conduct more trade and are more dependent on their friends.

The most recent example is Reagan's cutoff of U.S. technology for the Soviet-European gas pipeline. By denying export licenses, Reagan sought to block the transfer of critical turbines from General Electric and other high-technology items needed for the pipeline. When the allies pressured their own companies to ignore the ban, the U.S. threatened to revoke trade privileges for firms that disobeyed. There were several economic repercussions. First, the completion of the pipeline was delayed by at least one year, and arguably two years. During that time some governments, notably the Dutch, realized that Soviet demands for subsidized credit of about 8.67 percent, combined with a "floor price" for gas purchases in the midst of declining world energy prices, made the pipeline a poor deal anyway. France and Italy negotiated an escape clause allowing them to wriggle out of payment for 20 percent of the contracted shipments. (Gordon Crovitz outlined these economic impacts in a series of articles from 1982 to 1984 in *The Wall Street Journal*.) Judging the political effects of all this on the Western alliance is a subjective business, but on the whole, the exercise was a plus.

Reagan's sanctions produced no long-term fissure in the alliance. If anything, they contributed to a matrix of useful pressures that have led France, Britain, and Germany to policies more supportive of the United States. In Germany the pipeline fiasco was part of a broad reaction against *Ostpolitik* that helped bring to power the Kohl government. Since the deal, French president Mitterrand has become arguably the staunchest ally the U.S. has on most foreign policy questions. Reagan's stand showed that he was willing to run risks, to bear criticism from Europe, in pursuit of a longer-run effort to make the Soviets bear a higher cost for repression in Eastern Europe and elsewhere.

Another example is the case of Turkey, the object of U.S. and then European sanctions from 1974 to 1978 and 1981 to 1982. Such sanctions do not appear to have satisfied the lust of the Turks for Cyprus. But they have arguably helped contain that lust. And Europe's 1981 cutoff of Organization for Economic Development credits and other assistance has led to visible movement toward complete democracy. As a result, the West enjoys an ally that is more democratic, and thus more strong and more stable, than it was several years ago.

*Sanctions against small enemies*: Perhaps the most attractive target for sanctions is the small, pesky foe: Cuba, Vietnam, Nicaragua. After all, though these countries are weak economically, their Marxist-military governments may wreak havoc among their neighbors. What's more, despite their size, they are no pushover militarily. A stiff package of sanctions is often seen as the best way to keep the heat on.

Economically, such sanctions have a good record. The U.S. embargo of Cuba was begun in 1960 under Eisenhower and extended beyond sugar to all Cuban goods by President Kennedy in 1962. It has, in the words of Harvard's Robin Renwick, helped to "increase the costs to the Soviet Union of support for the Cuban economy." By one estimate that subsidy is on the order of five billion dollars per day—greater, as a share of the Soviet economy, than the costs to the U.S. of supporting Vietnam in 1973. We can never be precisely sure where these increased costs will be reflected in altered behavior. But it is plausible to speculate that wavering Soviet-Cuban support for Angola and Nicaragua reflects in part the thinning of resources imposed by 20 years of pressure. Though generally pessimistic about the effectiveness of sanctions, Hufbauer and Schott credit them with helping to weaken the economies of both North Korea and Vietnam.

Politically, the effect of sanctions on such small but resilient enemies is more doubtful. Indeed, economic sanc-



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tions may hasten their growing ties with the Soviets. In the case of a popular leader like Castro, sanctions may provide a common external enemy, useful in whipping up domestic support. They may raise anti-American leaders to greater status. Still, in these cases, the question of whether economic pressure produces some directly tangible result resembles the somewhat artificial distinction between "military aid," which involves sending someone guns, and "humanitarian aid," which involves sending them butter, so they can cut their own spending on butter and buy more guns. Even if sanctions against a Vietnam or Cuba fail to topple a regime and temporarily strengthen it, in the long run they lessen its ability to spread trouble elsewhere.

*Sanctions against small allies*: These offer perhaps the most potent impact. Consider the Smith and Jones paradigm: the small ally often relies on the United States for the economic or moral equivalent of insulin. This may sound harsh, but it is a recognition of reality. If U.S. leaders keep this reality in mind as they shape foreign policy, the result will not be cruel but beneficial to America and its neighbors.

From 1975 to 1977, U.S. economic pressure deterred both South Korea and Taiwan from building nuclear reprocessing plants. Swift and decisive sanctions by Gerald Ford have prevented both countries from joining the club of nuclear-armed nations. Beginning in 1977, and ending with the suspension of U.S. military aid in 1979, Jimmy Carter's withdrawal of support from Nicaragua helped bring down the already rickety Somoza regime. One can argue about the wisdom of these sanctions, since they brought to power a government arguably no more humane than Somoza's. On the other hand, various economic pressures on Brazil, Argentina, and El Salvador, initiated during the Carter administration, helped convince those countries of the need to improve on human rights. Today all three have held, by Latin standards, impressively peaceful and honest elections.

THE POTENTIAL effectiveness of economic pressure is being demonstrated today as the West begins to apply sanctions against South Africa. The program, first approved in both houses of Congress, and then largely co-opted by the administration, seeks to abolish the sale of gold Krugerrands in the United States, cut off future credit from U.S. banks, and ban further computer sales. Sheer numbers suggest the effect could be significant. South Africa sold more than $600 million worth of Krugerrands in the United States in 1984, almost 40 percent of the country's coin exchange. Computer sales from the United States were valued at $184 million, about 70 percent of South Africa's total purchase of such equipment. U.S. loans in the last several years have run between $300 million and $600 million per annum. Altogether these items total more than one billion dollars, or about one percent of South Africa's gross national product. And they hardly exhaust the possibility for sanctions. If the Western allies are serious, they might add diamonds to the list of contraband, a much larger export item.

Of course, critics argued, Germany and Britain conduct more trade with South Africa, and might well be induced to fill the U.S. gap. But if this were a certainty, the prospect of sanctions would hardly have provoked such opposition from U.S. supporters of South Africa and from the South African government itself. The old argument that a number of countries must cooperate in a sanction misses the more important question of how you get them to cooperate. First French and then U.S. sanctions have made it harder for other Western governments to blink at apartheid. Last week Britain joined the other Common Market countries in applying sanctions.

Adding to the potential impact will be the growing moral stench of apartheid among Westerners, and the presence of a democratic movement within South Africa. Freedom fighters have already produced successful boycotts of white stores and closed down vital mines and transportation industries with peaceful work stoppages. Black consumers in South Africa, according to *The Wall Street Journal*'s Steve Mufson, control about 47 percent of the total buying power in the country. Boycotts have already imposed a 30 percent loss of business on average on largely white-owned stores. Foreign investment capital, fearing just such developments, has begun to flee.

OBVIOUSLY, the hope is that such confrontations, even economic ones, can yet be avoided if the Botha government sees them as a clear possibility and acts to avoid them. But what if it does not? Or what if it is already so weakened that militant black rebels spurn even genuine reforms? The reluctance of conservatives to use sanctions against countries like South Africa—or the even closer calls of Chile and the Philippines—derives, it seems to me, from precisely this fear. It is not the fear that sanctions will not work. It is a fear that they will "work," producing another Nicaragua or Iran.

Even so, there are some pragmatic reasons for Reaganites to support Reagan's de facto policy of "constructive disengagement," as William Safire calls it. For one would think, if a Ronald Reagan will not step in to prevent the emergence of a Soviet client state in South Africa, who would? Pushing the moment to its crisis may be dangerous, but it may be more dangerous not to. In the sweep of history, apartheid is bound to change, and probably in a dramatic spurt rather than, as the human heart would prefer but the human mind can seldom engineer, in some gradual and predictable fashion.

What seems obvious is true. America's vast economic resources are a powerful tool. Like any tool, they are often misused, applied ineptly on behalf of right purposes, or used skillfully on behalf of bad ones. But where sanctions are used ineptly, it does not mean that sanctions cannot work. As the world now stands, many other levers are either in moral disrepute (say, covert action) or unusable (nuclear weapons) or ineffective (propping up friendly dictators). The United States may need its economic powers of persuasion more than ever. □



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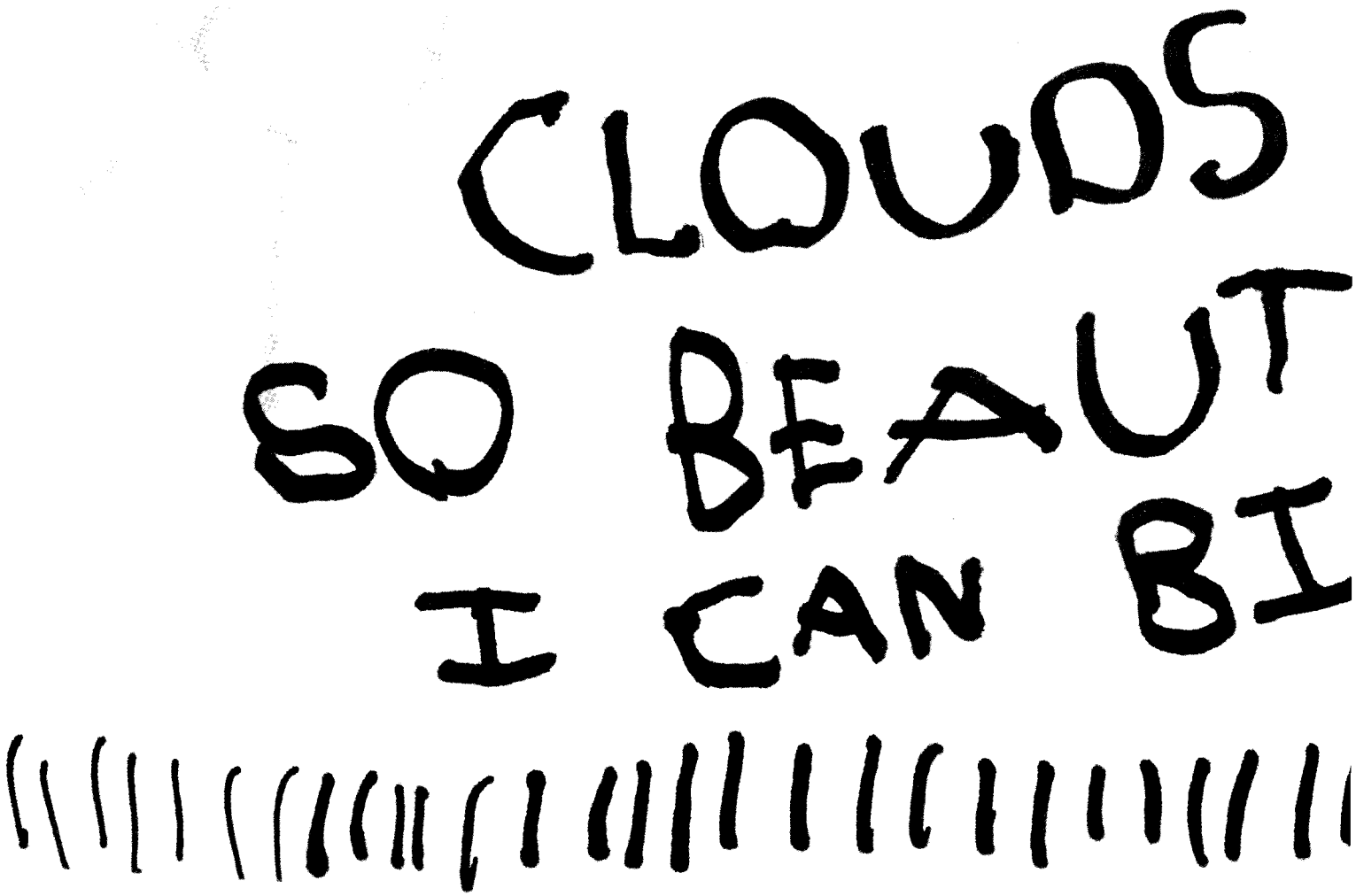


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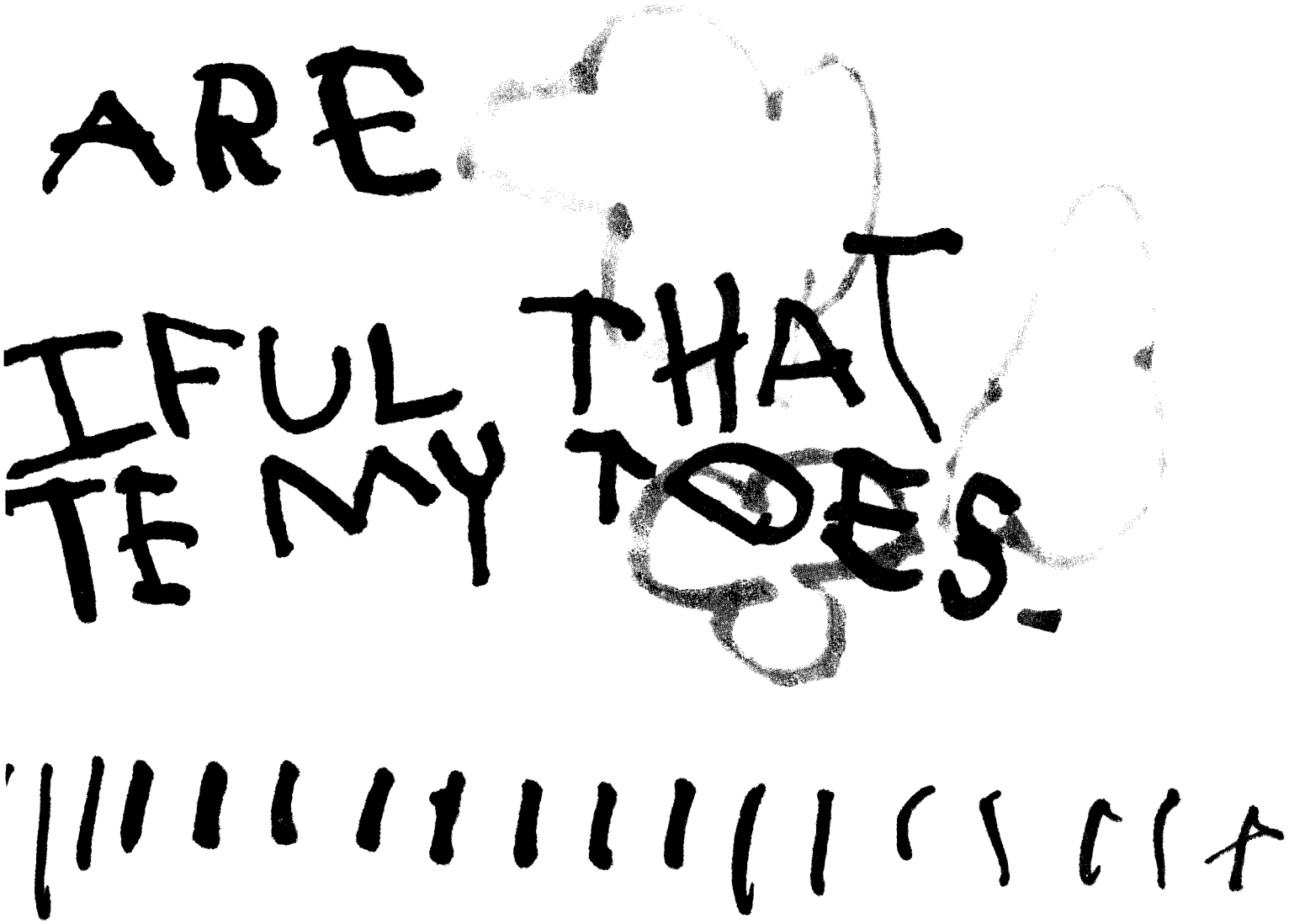


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# STANLEY KAUFFMANN ON FILMS

## Strictures and Stresses

Americans make so few personal films these days—films originating solely in the filmmakers' impulse to make them—that it's usually painful to report negatively on one of them. But not always. *Mishima: A Life in Four Chapters*, directed and cowritten by Paul Schrader, which is surely a personal picture, is such an overweeningly ego-

*Mishima: A Life in Four Chapters*
(Warner Bros.)

*Sheer Madness*
(R5/S8)

tistical, pretentious, and ultimately silly piece that it leaves one more irritated than regretful.

Mishima's biography needs little retelling. Many of his novels and some of his plays have been published in English; some of the films he made and acted in have been shown here. (I once saw a half-hour work, *The Rite of Love and Death*, which is somewhat prophetic. Mishima played a young officer who took part in a failed military coup; he commits seppuku while his wife watches. She follows him.) His homosexuality is known, as are his reactionary military-imperialist politics and his organization of a private uniformed legion. Also known are the details of his appeal to a Tokyo military garrison in November 1970 to follow his lead, their derisive refusal, his seppuku immediately after.

The film, American-financed, was shot in Japan with Japanese actors. Schrader's script collaborator was his brother Leonard, whose Japanese wife translated the dialogue, except for some English voice-over narration. The four "chapters," each of which has a lofty title, are merely four sections of a disjointed narrative. The film begins on Mishima's final day, then proceeds with flashbacks and with synoptic versions of three Mishima novels, spliced with "present" and flashback scenes, and concludes with Mishima's death. The "present" scenes are done conventionally; the flashbacks are in black-and-white; the novel synopses are done in an abstract style reminiscent of numbers in Hollywood musicals of the 1940s. The sum of all this is no sum. Nothing adds up. The novel excerpts tell us something of Mishima's predilections for various sorts of pain and destruction but do nothing to consolidate a character and theme.

Much has been made of the fact that Schrader was prohibited by Mishima's widow from exploring the author's homosexuality and politics. Much comment on the film has objected to Schrader's decision to proceed anyway. True, Mrs. Mishima's restrictions reduce the protagonist's connection with homophilia to one adolescent arousal by a seminude painting of the suffering Saint Sebastian; and those restrictions leave Mishima's last outburst on the garrison balcony virtually ungrounded in the whole preceding film. It's as if one had to omit heterosexuality and politics from a film about D'Annunzio. True, too, that those excerpts from Mishima's fiction make poor surrogates for the omitted material and that Schrader's persistence in making the film shows more obtuse obstinacy than admirable grit.

But my objection begins earlier. Suppose there had been no restrictions. Suppose Schrader had been given free use of everything in Mishima's life and works. Why would this have resulted in a good film? One or another of the novels in itself might make a good film. (One of them, *The Sailor Who Fell from Grace with the Sea*, made a bad film in 1976.) But Mishima himself was a somewhat loony romantic sensualist, reportedly of some personal appeal, whose interest outside his work was political activity aimed at undoing the little that has been learned politically in this century. I can't speak about the appeal of his biography in Japan, but elsewhere the more that was known, surely the more eccentric, ludicrous, even repellent he would seem, not even heroic in a cautionary way. How could any film, any filmmaker, induce us to care about his life? And as for this maimed version of it. . . .

Ken Ogata plays Mishima, shackled. In Imamura's *Vengeance Is Mine*, Ogata had a forceful role that he could articulate through his own force. Here he keeps trying to impose his own power on a limp role as if applying artificial respiration.

Margarethe von Trotta is one of the best living directors. *Sisters* and *Marianne and Julianne* established her stature, and her new film, *Sheer Madness*, sustains it. But her screenplay for her new film is much inferior to the scripts of the two earlier ones.

It takes place in an unidentified German city (with expeditions to Provence and Egypt), and as did the earlier works, it deals with relations between two women. This time the two are not sisters, as they were earlier, but friends—played by Hanna Schygulla

### FILMS WORTH SEEING

*After Hours.* A Manhattan yuppie's midnight-to-morn escapades in Soho. Martin Scorsese's fine satanic direction doesn't quite suit the light script, but there's adventure in it. (Reviewed 10/14/85)

*Back to the Future.* Fresh time-machine fun. A teenager, whirled back 30 years, finds himself uncomfortably involved in his parents' high school romance. (8/5/85)

*Plenty.* David Hare's screen adaptation of his play flattens much of its tension, and Meryl Streep as an Englishwoman who suffers post-war letdown lets *us* down. But some of the dialogue and some of the actors (John Gielgud!) are sparkling. (9/30/85)

*Wetherby.* David Hare again, this time writing *and* directing. An inquiry into moral numbness that gets a bit numbed en route; but there's bright writing and, supremely, Vanessa Redgrave. (8/12&19/85)

**SK**



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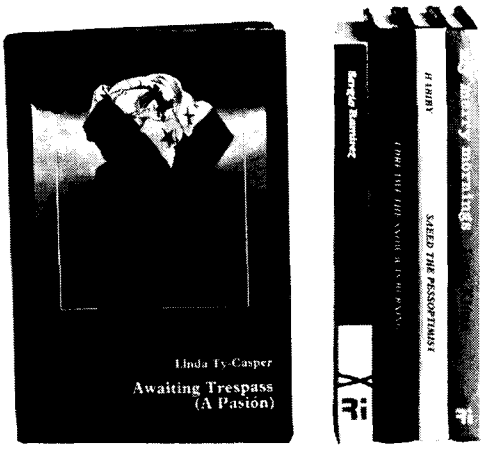


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and Angela Winkler. And unlike the earlier works, this script interweaves the story of the pair very closely with men. This new element seems to throw von Trotta's writing off balance.

Schygulla, separated from her husband, lives with her lover and her son; Winkler lives with her husband. It is Winkler's husband who figures particularly among the men and also figures particularly in the script's imbalances. Schygulla, a university teacher specializing in literature by women, is poised, controlled, sympathetic. Winkler, a former teacher, is neurotic and withdrawn, devoted to her husband but frightened of others; she spends most of her time painting in black-and-white, though she once painted in color. The threat of suicide runs throughout Winkler's story, as it did with the younger woman in *Sisters*, and the fantasies of suicide are also in black-and-white. When Winkler meets Schygulla, she is drawn to Schygulla's strength; after some hesitation, Schygulla becomes her close friend, so close as to suggest a faint touch of homoeroticism. The drama involves the two close women and Winkler's husband, who loves her and at first beseeches Schygulla to befriend her. He does what he can to help his wife, but makes some well-intentioned blunders; when she learns of them, she shoots him. The shooting and her trial are in black-and-white. In her last statement in court, to Schygulla's surprise, she thanks her friend for her help in killing her husband.

I have thought of von Trotta (like Márta Mészáros) as a woman making films about women that, among many other rewards, provide enlightenment about women. *Sheer Madness* is something else—a markedly canted feminist film, designed to make a man seem oppressive, even villainous, when he truly loves his wife and does what he does out of devotion. Are we to infer that even a devoted husband can never understand his wife? Do women have a monopoly on understanding? Every myopic or selfish action in this film is committed by a man. Women are seen as a better breed of beings entrapped by men, and a woman is even more wretchedly entrapped if she and a man love each other. The murder is seen as extreme but not entirely unjustified; and Winkler's gratitude for Schygulla's "assistance" is meant to strike a sympathetic resonance in us. The history of male dominance and oppression is clear, but does it cover every event today? If a black person kills a white, do we automatically shrug it off as the result of centuries of slavery?

This beatification of women is carried to near-caricature in von Trotta's treatment of Schygulla. Von Trotta, I must note, isn't alone in this: Wajda and Fassbinder, too, have tried to exalt Schygulla into a German super Jeanne Moreau, an Eve of Eves. In *Sheer Madness* this process reaches its nadir when, at a party, Schygulla sings a love song in English, with little voice and not much English—a moment that is supposed to seal our enchantment but, shall we say, does not.

Still, von Trotta's filmmaking as such is wonderful. The opening shot is of Winkler's hand dangling out a window in the rain, her back to us, as she answers questions from an unseen analyst. As the camera pulls back into the room, we know already that we are in the hands of a director who can see the usual in unusual ways, not to be egotistically eccentric but to reveal unobserved aspects of the commonplace. Gentle underscoring by camera movement, simple yet startling use of planes of depth, the movement of actors in unusual yet unforced patterns, evocative ellipses in the editing—all these and more confirm von Trotta's extraordinary talent. If the script were as good as the way it is filmed, *Sheer Madness* would be as good as the two pictures that preceded it.

# THE TRAGEDY OF ANTI-ZIONISM

## The Tragedy of Zionism: Revolution and Democracy in the Land of Israel by Bernard Avishai

(Farrar, Straus and Giroux, 389 pp., $19.95)

There is no lack of acerb commentaries on the failures of Israel; the more negative the assessment, the more likely that it will be applauded as evenhanded, particularly if the author is a Jew and by his own admission a disenchanted Zionist. But Bernard Avishai has set himself a more ambitious task. He wishes to dispose of Zionism—socialist, religious, and Revisionist—as a viable movement. His credentials are an impressive knowledge of Zionist history and ideology.

To be sure, despite Israel's great achievements, few Zionists would pretend to the glad confidence of the beginning. Unremitting Arab assault has taken its toll not only physically, but spiritually; bitter misgivings about Labor's bureaucracy, about Likud policy, about the grip of fanatical orthodoxy, are freely voiced. Indeed, the harshest and most anguished critics are Israelis. But they are not likely, many of them, to subscribe to Avishai's obituary for Zionism, and for the significance of Israel for the Jews of the Diaspora.

To make his case that Zionism was conceived in original sin, with no hope of salvation, the author must invalidate not the Likud, which is an easy target, but Labor Zionism, whose demolition in fact occupies most of the book, so that none may seek refuge in the belief that a new regime might resurrect a brighter past. It turns out that all the egalitarian rhetoric, all the legendary kibbutzim in the Emek and Negev, were only the forerunners of Gush Emunim. Brought up in the Labor Zionist movement and once attracted to its ideals, Avishai is too well-informed to dredge up the gross libels of anti-Zionist propaganda; while divesting the past of its aura, he makes sure to mention the agricultural communes and the new towns built in wastelands. And he punctiliously quotes the credo of the socialist settlers: "We shall find a way of partnership with the Arabs. Cooperative life and work would be a blessing for both peoples." What was the tragic flaw, then, in their vision? "These socialists wanted a national language, they stressed the Jewish spirit."

Political Zionists fare no better. While socialist Zionists rested their moral title on the gradual reclamation of



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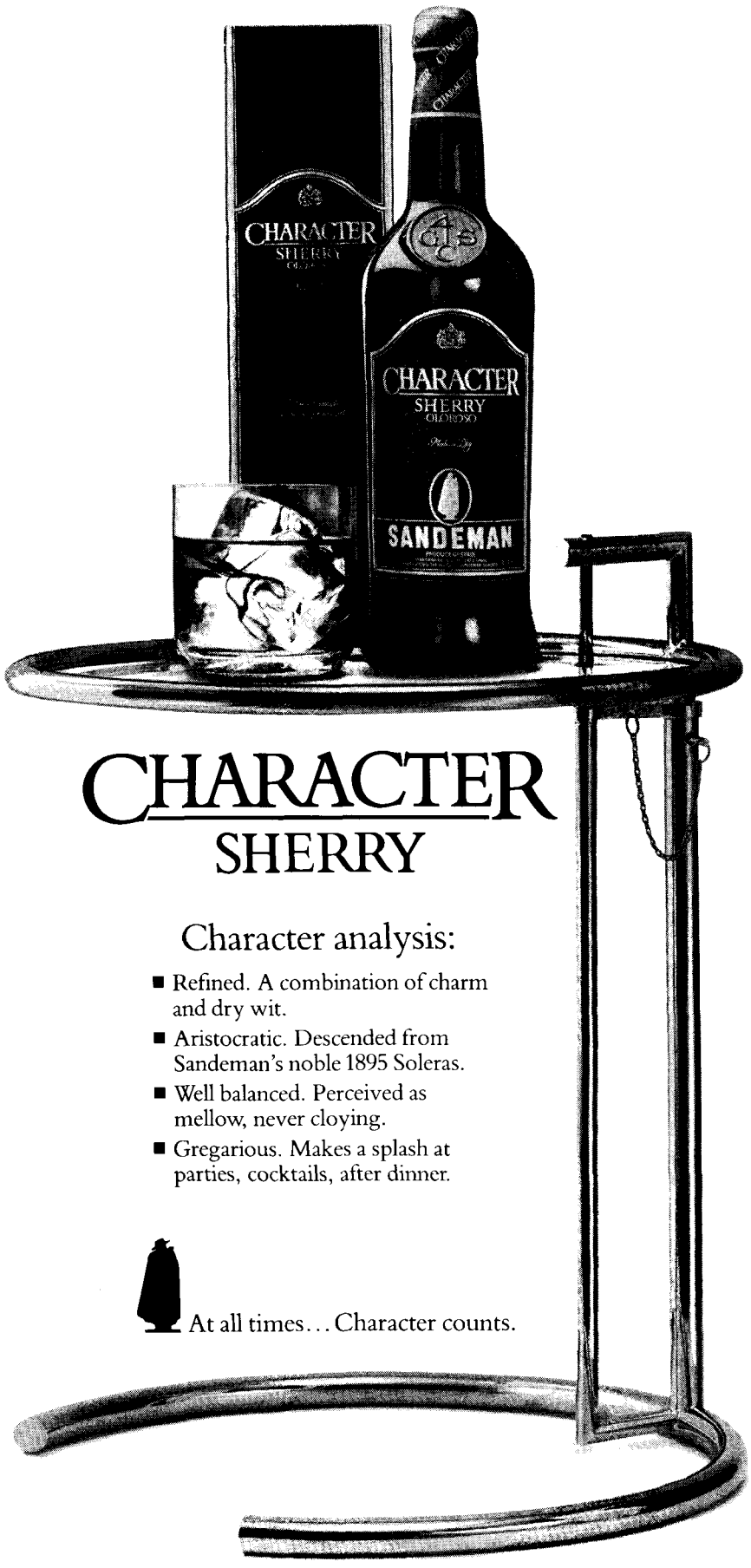
land through productive toil, political Zionists, beginning with Herzl's mirage of a charter from the Sultan to Chaim Weizmann's Balfour Declaration, sought legitimacy for Jewish nationalism through recognition by the reigning power. Avishai frivolously dismisses political Zionism as a movement that promoted "duelling, fraternities, songs and marches, and a rather atavistic nationalism." This might be a moderately accurate description of pre-state Revisionism; but thus to describe Herzl's utopian dream of the happy co-existence of Jew and Arab, or the later painstaking struggle culminating in the passage of the Partition Resolution in 1947, can only be explained by the author's determination to manufacture a spurious genealogy for all the varieties of Zionism. Thus Vladimir Jabotinsky, the Revisionist ideologist and Menachem Begin's mentor, becomes not only political Zionism's "heir but its first genuine article."

LABOR Zionism's pretensions to a just society are deflated by another egregious reference to Jabotinsky, who, we are told, "took for granted the evolution of a Hebrew civil society more liberal in substance and individualist in style than what the Labor Zionists were creating." On the same page we are given a sample of Jabotinsky's credo: "The competitive order of the world's economy which causes one man to win and another to lose is here recognized as the normal and permanent foundation of all social activity." But just how *is* this social Darwinism more "liberal" than Labor Zionism's dream of an egalitarian, cooperative society?

Another "fundamental tragedy" of Zionism is the Histadrut, Israel's General Federation of Labor: "The Histadrut's standards were never designed for a democratic state. They were a kind of 'dictatorship of the proletariat.' " (An estimate with which Jabotinsky would have heartily concurred.) Originally organized as a federation of Jewish workers, the Histadrut dropped "Jewish" from its name after the establishment of the state—a detail the author does not bother to mention. But how does a trade union whose representatives, consisting of Jews and Arabs of every imaginable political faction, freely chosen in hotly contested elections, qualify as a "dictatorship"? To further confuse the issue we learn that Ben-Gurion consented to partition in 1947 not merely to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provide a refuge for Nazi victims, but "to consolidate" Labor Zionism's undemocratic institutions, such as the Histadrut. And then we are told that Mapai, or the Israeli Labor Party, had created "a legitimate and democratic quasi-government," and that Ben-Gurion had properly accepted "the only democratic solution possible." What happened to the dictatorship of the proletariat of a few pages earlier?

NOR IS Labor Zionism allowed even the credit for liberating Jewish Palestine from the Mandatory Power. Instead Avishai echoes the Likud boast that the terrorist Irgun drove out the British: "The Haganah would not go along, of course, but Begin's forces struck out on their own." Has the author never heard of *Ma'avak*, the struggle "to open the gates of Palestine" spearheaded by the Haganah, the underground defense force of Jewish Palestine? By 1947 the Haganah, through attacks on British camps to release imprisoned illegal immigrants and on British military installations, had succeeded in bringing in 90,000 immigrants. This relentless war sapped British endurance more decisively than such spectacular outrages as the Irgun's blowing up of the King David Hotel. The difference, crucial for understanding the present as well as the past, was Labor Zionism's determination that resistance not degenerate into terrorism. I can testify to solemn discussions, in the heat of the struggle, on the nature of justified force; the final consensus held that only military action required to bring in illegal immigrants, and to establish settlements of Jewish National Fund lands within the boundaries of the promised homeland, was ethically permissible.

Avishai is also unimpressed by Israel's triumphs in unequal wars. He hastens to disabuse us of the "misty notion" that 600,000 Jews repelled six Arab armies against "high odds" in 1948. In his count Jewish forces outnumbered the Arabs two to one. He does not bother to note that literally every boy and man able to carry a weapon constituted Israel's people's army. Had the Arab states seen fit to summon their millions, Israel would have been easily overwhelmed, since the tiny country was as disadvantaged in arms as in manpower. A readiness for total sacrifice hardly lessens the odds.

Having disposed of the myth of Israeli heroism, Avishai gets entangled in the thornier question of Arab wrongs. To the familiar Zionist argument that, instead of having been displaced, the Arab population of Palestine actually doubled in the years of Jewish settlement, because Arabs from Syria and Jordan flocked into Palestine, attracted by fresh opportunities provided by Zionist development, Avishai counters that Arabs in Damascus, Amman, or Jerusalem were "culturally indistinguishable and, in their own eyes, were doing no more than moving from one part of the Arab homeland to another." He is absolutely right. But by the same token Israelis may wish to know why Arabs who left Haifa for the West Bank, Amman, or Damascus deserve to be called "homeless" Palestinians. In the 1960s sophisticated Arab nationalists noted the logical pitfalls presented by the Arab insistence that all Arabs constituted a single people; such reasoning made the resettlement of Arab refugees in another part of the Arab world a solution to the Palestinian problem.

GOLDA MEIR is often cited as an example of arrant insensitivity to the Palestinian problem. Avishai quotes the incriminating words: she said "she was a Palestinian, too." He is mistaken; she would never have said "too." When she arrived in Palestine in 1922 only Jewish pioneers called themselves Palestinians. Arabs objected to the designation as a fragmentation of a proposed unitary Arab state. As late as 1956 Ahmed Shukairy, at that time the Syrian representative to the United Nations and subsequently the founder of the PLO, declared to the Security Council: "It is common knowledge that Palestine is nothing but southern Syria." Small wonder that after a lifetime spent in fighting Arab nationalists to prove that Palestine was not a Jewish invention, Golda Meir remained skeptical of the authenticity of the Palestinian (as distinct from Arab) nationalism that emerged after 1967. Her passionate pleas to Arabs for peace and reconciliation were premised on the conviction that the resettlement of 600,000 Arab refugees among fellow Arabs, like the resettlement of an equal number of Arab Jews from Arab countries in Israel, was no violation of the moral order. As Avishai would say, it was all one Arab homeland.

Avishai proceeds with his indictment by citing the alienation of Sephardi immigrants, for which the governing Labor Zionists are held responsible. He repeats the standard charges, with which many young Israelis concur: the Europeans were patronizing, disrespectful of cultural differences; they discriminated against Sephardim, treating them as inferiors. These accusations have been exploited demagogically by Likud, and taken to heart by Labor Zionist veterans, who belatedly admit the errors of their ways.

But some qualifications of this breast-beating are in order. I was in Israel at various times between 1948 and the early 1950s, when the "Ingathering" was in full swing. I remember the initial rapture with which each new group from East and West was greeted; the dispersed tribes were coming home. Just as vividly I remember trudging through mud in the winter rains to makeshift huts hastily erected for the flood of newcomers, whether they came from Poland or Morocco. The provision of adequate housing was an urgent priority for a state beset by massive economic and security problems. The volunteer workers I accompanied were helplessly aware of the hardships the newcomers endured, though some of the older among them tactlessly noted that, when *they* had come in the 1920s, assured food, shelter, and even minimal comforts were undreamed-of luxuries. There were difficulties, then, but the difficulties were shared equally by European and oriental Jews.

THE OLD-TIMERS, to be sure, took for granted that the society they were striving to create in Israel was superior to what they had experienced in the Diaspora; and their dream of "remaking themselves" included oriental as well as Western Jews. I recall a volunteer insisting, in a time of austerity, that eggs allotted for children not be consumed by parents. Should she have respected the mores according to which elders were given preference? Some oriental Jews were polygamous. Israel was wise enough not to disrupt existent polygamous marriages; I saw the separate living quarters made available to the several wives and offspring of one patriarch. Should the state subsequently have tolerated polygamy? Similarly, insistence on the equality of women, and compulsory school attendance for boys and girls, were all violations of a patriarchal society. But in a rational society it is fair to ask how far reverence for ancient folkways should go. To take an extreme example, did the British transgress



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when they abolished suttee in India? Are protests against female circumcision a "maternalistic" Western interference in tribal tradition? A society might be commended, rather than reproached, for including all its citizens in its social vision; the reverse would surely be a form of condescension and contempt.

Many mistakes were made. Israelis were wrong in assuming that given equal opportunity all children would fare equally in school, when conditions in the home were unequal. The hope that new immigrants, European or oriental, would wish to continue the pioneer tradition in development towns and kibbutzim was an illusion. Instead newcomers drifted back to Tel Aviv and Jerusalem, where those least able to compete created the present urban slums. And there was plenty of incomprehension, superciliousness, and bureaucratic favoritism to compound the immense problems with which all Israel struggled. But unlike the situation of the blacks in the United States, a frequent and false comparison, Israel's goal was an integrated people. The present rate of intermarriage on all social levels is 30 percent. And the grandchildren are making great strides, as the growing Sephardi representation in government and the professions indicates. Today, in its absorption of Ethiopian Jews, Israel is nervously wary of repeating former errors.

That Sephardim became Menachem Begin's fervent supporters is indeed a tragedy. Still, Avishai weirdly commends Likud for encouraging "laissez-faire in culture as well as industry," and for protecting Sephardim from "old Labor Zionist elites." Never mind that Likud appealed to unsophisticated followers with demagogic promises of triumph in a divinely sanctified Greater Israel, and with irresponsible economic blandishments that led to disaster.

IN DISCUSSING the "tragedy" of the West Bank, Avishai predictably lessens the ideological gap between Labor and Likud. Because Labor recognizes the danger to Israel's Jewish and democratic character if a million unwilling Arabs are to be incorporated into the state, its program, the Allon Plan, has consistently called for withdrawal from all heavily populated Arab areas, that is, from the major part of the West Bank, while retaining limited security points to protect Israel's vulnerable borders. Avishai makes light of Labor's


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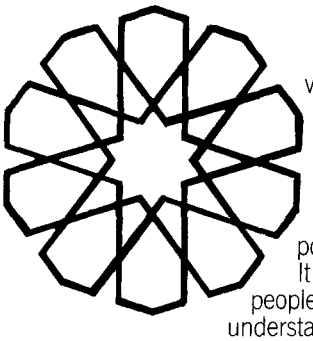

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readiness to withdraw from the West Bank, however, by reference to the 1967 annexation of old Jerusalem, which he calls "Arab Jerusalem." The objection is specious. A few points should be noted. In 1948 Jordan captured the West Bank on which, according to the Partition Resolution, a Palestinian state was to have been established. It also seized the old city of Jerusalem, in which Jews had been a majority for 200 years. It is superfluous to dwell on the significance of Jerusalem in Jewish tradition. Still, in 1948, for the sake of independence and peace, Israel agreed not only to partition, but to the internationalization of Jerusalem, too. When in 1967 Israeli troops reunited the divided city in the most emotionally charged moment of that unsought war, they saw the devastation wrought by Jordan: the destruction of ancient synagogues and of the Jewish quarter. Thus even most dovish Israelis, eager to be disembarrassed of the West Bank, would not agree to the artificial redivision of Jerusalem. How the city, Arab and Jewish, has prospered under Teddy Kollek is a familiar story.

While it would take considerable rearrangement of the evidence to demonstrate that Israeli Arabs are a disenfranchised minority, the West Bank is another matter. There is no point in citing various economic and cultural advances Arabs have made during a "comparatively humane" occupation. The West Bank Arabs want independence; the problem for a realistic Israeli government is to agree on a framework that would not endanger Israel. But so far even "moderate" advocates of a Palestinian state have made no secret of their intention to use any "liberated territory" for the easier destruction of Israel. As recently as May 14, 1985, Yasir Arafat, now hailed as a possible negotiator, told an Arab League seminar in Tunis that he would never accept Israel's "right to exist." This intransigence makes "the Jordanian option," favored by the United States and supported by Labor, a remote hope, particularly since Hussein demands Jerusalem. It also strengthens Greater Israel extremists.

YET THE thrust of Avishai's discussion is not to proclaim the merit of "the Jordanian option," or any other political arrangement, but to demonstrate rather that Zionism and democracy are incompatible. "Zionism or Democracy" his chapter is called. Though in a previous chapter he cautions that none of his criticisms suggest "that Israel failed to become a democracy in essential respects" since "it enjoyed parliamentary rule and Arab citizens voted," quickly he changes his colors. By 1984 "Israel had no formal constitution, no developed tradition of parliamentary courtesy and ministerial responsibility, no checks at all on parliamentary authority, no regular contact between electors and elected," and no Bill of Rights.

I AGREE that parliamentary courtesy was never a virtue of the Knesset, but otherwise it is hard to take Avishai's accusation seriously. Israel incorporated British common law; like England, therefore, it has no written constitution. (No constitution was adopted in 1948 to safeguard the secular character of the state, which might have been imperiled if the dogmas of the religious bloc had been given constitutional sanction.) Israel's Declaration of Independence guarantees "complete equality of social and political rights for all citizens without distinction of creed, race or sex" and is the equivalent of the French Declaration of the Rights of Man and the American Bill of Rights. The authority of Israel's Declaration may be judged from the fact that in response to Meir Kahane's anti-Arab agitation the Knesset recently passed a law banning parties that incited to racism or otherwise violated Israel's democracy as defined by the Declaration. In Israel, as in England and France, there is no separation of powers, but any reader of the press knows how often and how effectively the Supreme Court acts. And Israel's system of proportional representation, allowing tiny parties to participate in the government, is democracy carried to excess.

The ultimate absurdity in Avishai's skepticism about Israel's democracy is his reflection on the Hebrew language. It is so ancient, he says, that "it cannot fail to convey archaic thinking about politics." Since the Hebrew word *democratia* does not appear in the Bible, Israeli democracy cannot be authentic. Well, neither Abraham nor Moses had occasion to speak of automobiles, but no tourist will question the authenticity of Israeli cars. Hebrew, moreover, is also "confining to the imagination": so much for the likes of Amos Oz and Yehuda Amichai. And then, having expounded the antithesis between Hebrew and democracy, the author undergoes another transformation to praise the "liberal, post-Zionist curve of Israel's leading writers." Are they writing in Esperanto? He also commends the educated public's preference for "post-Zionist pluralism," whatever that means, and just as mysteriously sees hope in the "Second Israel's incipient social Liberalism."

Though earlier Avishai averred that Zionism's "greatest tragedy" was the fact that "the disciples of mainstream Labor Zionism, for all their faults, had been thrown out of power by Begin," he finally dismisses attempts to revive an "old" anachronistic Labor Zionism whose exponents "refused to admit that they lived in a plural society." And since the "new" Zionism of the Greater Israel fanatics obviously offers no hope, the condition is clear: "For Israeli democrats, Arabs included, Zionist ideas are at best a distraction, at worst an invitation to authoritarian forces." But what is Avishai's "post-Zionist pluralism"? A semantic game that labels all democratic expression in Israel as "post-Zionist" clarifies nothing. Surely he is not hinting at the "democratic, secular state" that the PLO proposes, from which "Zionists" would be expelled. But Israel has hardly ignored its plural constituency. At a Cabinet meeting in 1948, for example, Ben-Gurion said that

> we must begin working in Jaffa. Arab workers must be employed there, and at the same wages as Jewish workers. An Arab should also have the right to be elected president of the state. If a Jew or Negro does not have the right to be President of the United States, then I for one doubt the existence of civil rights there.

He opposed only the return of Arabs who had joined the enemy—the argument used by Benjamin Franklin against the return of pro-British Tories.

THAT these sentiments were eroded and corrupted by relentless Arab aggression is undeniable. The absence in 1917 and 1948 of a specifically Palestinian nationalism has provided the rationale for Balfour's hope that Arabs, freed from Turkish rule, would not begrudge "the little nook" in their vast territories to the historic claim of the Jews, and for Weizmann's belief that the national sentiments of Palestinian Arabs would find "complete and natural satisfaction" in the Arab states set up by the Allies. They were wrong. Each new Arab attack bred new refu-


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gees, deliberately segregated at Arab insistence in U.N.-financed camps, to become the "cornerstone of the Arab struggle against Israel." The tactic by which understandable nostalgia for a hometown has been transformed into violent irredentism has successfully kept the Middle East cauldron seething.

I CAN DRAW up my own list of what went wrong: the fierce need to become "good soldiers"; the militant pseudo-Messianism of Gush Emunim zealots; Ariel Sharon's catastrophic venture into Lebanon; the emergence of Kahanism, a pustule the country is trying to excise. Decades of Arab terrorism, punctuated by periodic Arab attack, bred their inevitable Jewish counterparts. None of these developments, however, was inherent in Zionism. In a period when every budding nationalism, no matter how new, is hailed as a liberation movement, the idea of Jewish national independence requires no apologies. Explanations are due, rather, for the pathology that gags only at Jewish nationalism. The only decent question to be asked was whether Jewish independence could be achieved without injury to another people. Zionism, as it was historically and philosophically conceived, could honorably answer in the affirmative.

The author calls his book an "elegy" for Zionism, a movement that shrinks in his finale to something "invented" by a handful of East European Jews in the last century—quite a comedown from the millennial longing of a martyred people. Having buried Zionism, he completes the process by adding Jewish survival in the Diaspora to the mortuary. Once American Jews recover from their artificial fixation on Israel and tend to their own gardens, some, but "not millions," may decide to remain Jewish, functioning as modest study groups of Jewish history; a few, like Avishai, may even be stimulated to write "elegies" for Zionism; but the rest will disappear. Avishai's enthusiasm for pluralism, then, does not quite include the Jews. The argument has come full circle: give up Zionism, don't fret about Jewish survival, leave Israel to its vices.

One wonders why Avishai chose such a tortuous road to reach the old hat assimilationist position. Zionism only makes sense to those who believe that Jewish survival, physically and spiritually, matters. A will to live is not arguable, its absence no sign of health. Admittedly, American Jewry is diminishing without fanfare through intermarriage and a low birthrate. But the teaching of the Holocaust is not forgotten, nor is the contemporary scene, from Soviet Russia to Khomeini's Iran, reassuring. Despite the failure of American Jews themselves to accept the challenge of building the Jewish state, their unwavering support demonstrates an attachment more intimate than mere philanthropy. And the thousands of young American Jews who have flocked to Israel in every crisis, ready to die if not to live in its defense, show how deeply an obscure awareness of a common fate is rooted in Jewish consciousness. For Jews who rebel at the obliteration of their people, either through catastrophe or comfortable assimilation, Zionism is a living force and Israel is its expression. And the best hope for Israel lies precisely in the renewal and strengthening of the "old" Zionism that dreamed so extravagantly, achieved so bravely, and suffered so brutal a deflection. For if realpolitik, Great Power rivalries, and the furies of racial and religious conflicts prevail, we might as well start writing elegies for every humane vision, including democracy.

**MARIE SYRKIN**

Marie Syrkin, professor emerita of humanities at Brandeis University, is the author of *The State of the Jews* (New Republic Books/Holt, Rinehart and Winston). She wrote "How Begin Threatens Israel" in TNR, September 16, 1981.

# REPORT FROM THE FRONT

## Robert Capa: A Biography by Richard Whelan

(Knopf, 342 pp., $19.95)

## Robert Capa Photographs edited by Cornell Capa and Richard Whelan

(Knopf, 242 pp., $35)

In 1938 the British magazine *Picture Post* ran a nearly full-page photograph of Robert Capa above the caption: "The Greatest War-Photographer in the World." The picture shows Capa in profile, holding a camera flush against his nose and forehead, and making it appear that his face and the machine are fused in the single function of shooting a subject. The photo is a fine illustration of the similar effects of gun and camera; both make a target motionless, though the camera preserves what it shoots. The photo is a fine illustration of Capa as well, who seemed to participate in the wars he photographed as a sort of mercenary for art, a soldier hired by the rest of the world to keep suffering and heroism alive in pictures.

But Capa did not think of himself as an artist: "I'm not a photographer, I'm a journalist." He meant that he was out to report the facts of the wars he covered in Spain, France, Italy, China, Israel, and Indochina—his life's itinerary—and not to make those facts beautiful. Whether his pictures are beautiful or simply report beauty is one of several questions raised by these two books, which (however hard on one's wallet) must be read together. The biography gives Capa's life, and the collection of photographs the importance of that life. The biography is intelligent, respectful, and tuned perfectly to Capa's spirit. The photographs are like lost dreams.

There is a look to Capa's pictures one does not see today, which has less to do with Capa's professional abilities than with the world he lived in. Dark as it was, that world of the 1930s and 1940s was also part fantasy: tyrants with grand, expansive dreams striving to capture people's souls, and the people who wanted to hang on to their souls striving to bring the tyrants down. One had to enter the tyrants' dreams to contend against them, so, in a sense,

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everyone participated in a dream. Capa's pictures are our records of the last time people believed that they could will the world to heaven or hell, the last days of romanticism. They make one nostalgic for passion—not for the tyrants, of course, but for a time when life seemed in one's hands.

For Capa there would have been no life without pictures. Photography, a trade he picked up casually as a way of looking as if he had a job in Paris, provided the only real grounding to a life that was otherwise a noisy Bohemian costume party: uproarious, sad, fast, strange. Tales of sweet-talking rich girls in fancy hotels to get free meals. Tales of catching muddy fish from the Seine and cooking them in brilliantine. He seemed to make only friends, never acquaintances. He loved a lot of women and demanded nothing from them. His effect on people was not so much that of a real person as of a bright and cheering anecdote heard during an especially low time.

Even the name was unreal: Capa, born Endre Ernö Friedmann in Budapest in 1913, soon to be called by the diminutive Bandi, then renaming himself André when he went to France, and finally Capa. At first the name was part of a ruse. In Paris he invented the "world-famous" photographer Robert Capa for whom he could serve as agent, and whose pictures he could sell at much higher prices than his own. But the name change seems more than a practical trick; it was a sign of an era when everything could still be invented. Gerda Pohorylles, the one permanent love of Capa's life, who was killed in Spain, renamed herself Gerda Taro to enhance her own career as a photographer. Taro and Capa: easy to say and remember. But more—the names are like new words for new things.

What we see in Capa is someone who believed himself destined, or in his terms, assigned, to be part of the world's motions and changes. This he was, though as a photographer his true assignment was to make memories of the actions of others. Both roles, the actor and the observer, were fueled by an enormous general passion. "In a war," he told Martha Gellhorn, "you must hate somebody or love somebody, you must have a position or you cannot stand what goes on." His position against fascism was solid and constant, but beyond that his politics were anarchic. He was on the side of human struggle greater than any particular cause. The famous "Falling Soldier" photograph of the Spanish Loyalist militiaman at the moment of his being shot—chest exposed, momentum broken—is a stunning display of bravery and helplessness. Yet one feels that Capa could have made the same picture of a falling Insurgent, not because he ignored the difference in political values, but because he focused first on people.

TROINA, AUGUST 6, 1943

The attention was reciprocated. The life Capa made for himself was crammed with people, all of whom seemed not so much drawn to Capa as hypnotically attracted to him, welcoming his presence as something actually needed in their lives. Many of his friends were fellow photographers. Many of his friends were stars: Hemingway, Steinbeck, Ingrid Bergman. Capa and Bergman had a tender love affair, which seemed only fitting for the world's greatest war photographer and the heroine of *Casablanca* and *Arch of Triumph*, a movie Bergman was making when she knew Capa. In many ways Capa's life reads like a subplot of *Arch of Triumph*; in a brooding, sinister, black-and-white world, a fleeting figure with a camera moves among the principals. Richard Whelan's biography shows almost no introspective moments in Capa's life; only action, elation, sadness, speed—commands on a film set.

The people of Capa's photographs appear as real as Capa's friends. Some of these, too, are famous: Trotsky speaking in Copenhagen in 1932, his hands raised to his face in a gesture of intense exhortation; General Omar Bradley looking stern, efficient, and not at all silly with a white Band-Aid on his lanced nose; Picasso holding his baby son, each with the same obsessed expression. But most of his subjects are simply citizens of the war zones. An old woman and a vicarish-looking man sit beside and comfort each other in a London air-raid shelter, a bottle of milk on a table before them. Parisians, broadly grinning, celebrate liberation. Refugees everywhere. The wounded. The grief-stricken. The panic-stricken. An American soldier grasps the Torah in a Berlin synagogue in 1945 in the first Rosh Hashanah service held in that city since 1938.



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Capa seemed to have a real understanding of all these people, the strangers in the photographs no less than the friends he slept and drank with. It is possible (since this is true of artists) that he knew the strangers better than he knew his friends, since he created the people who existed in his photographs, and in a way belonged to them. Capa generated great natural intimacy, the capacity to enter someone else's heart after a few minutes of a first meeting. He played to the strength of this facility: he was the exuberant Hungarian, the man of all languages and nationalities, making everybody laugh. One also senses, however, that Capa lived entirely inside himself, that he gave a good deal more than he got, even if what he gave was often nothing more than a brief moment of energy and concentration. He seemed very much like a camera.

IF THIS impression is correct, Capa was right in playing down the artistic value of his pictures because, like him, the pictures have terrific quick effect, but do not ask to last. I suppose that every great photographer's work reraises the question of whether photography is art. Capa's work does so especially because it is at once arresting and unstudied. Unlike his friend Cartier-Bresson, Capa did not frame and balance his subjects. What he saw he photographed; one can see his eyes veer toward a subject with that camera affixed to his face as if the camera were an adjunct of his mind. His mind was the artist. The good instincts that allowed him to survive poverty, grief, and danger were the same instincts that pointed his camera in the right directions. He knew where the life was, and he turned to it automatically. That he died stepping on a Vietminh antipersonnel mine in Indochina makes one suspect that at the last moment somebody moved the mine.

Merely by living his life Capa created a profession and a tradition. When he learned of Hiroshima, he lamented that war photography would be finished. That was true in the sense that, from Hiroshima on, the wars that counted would not be accessible to close-up photography. But the "little wars" since 1945 have been brought to light by today's great war photographers—Susan Meiselas, Bill Pierce, Dirck Halstead, Eddie Adams, Catherine LeRoy, Matthew Naythons, and others—journalists in Capa's mold who also focus first on people. The difference is that it is difficult to find the dreams these days, the look in the eye that corrects the world. The capacity to endure evil and suffering; the capacity to endure victory; the suddenly realized heroism, piety, will—these things are what Capa caught in his subjects, and what he embraced. Both the life and the pictures were acts of affection.

**ROGER ROSENBLATT**

Roger Rosenblatt's most recent book is *Witness: The World Since Hiroshima* (Little, Brown).

# THEORY FALLS APART

## The Federal Courts: Crisis and Reform by Richard A. Posner

(Harvard University Press, 400 pp., $25)

## Constitutional Choices by Laurence H. Tribe

(Harvard University Press, 448 pp., $29.95)

American constitutional law today confronts a crisis of content and credibility unparalleled since the second term of FDR. More than particular cases, or particular legal doctrines, is at stake. As a consequence of the New Right's scorched-earth quarrel with the Warren Court—pursued through proposed constitutional amendments, "court-stripping" bills, and an unprecedentedly ideological judicial appointment process—the idea that our fundamental law should be any different from the latest electoral mandate is in very serious trouble. Though Ronald Reagan has thus far refrained from outright Court-packing, for the first time in half a century a national administration has both an expressed intention to reverse settled constitutional principles and the likely ability to carry those intentions out. Peter Finley Dunne's conceit about "the Supreme Court following the election returns" is suddenly taking on new meaning: the 1984 vote could be followed for a very long time. The Warren Court "revolution" was in many ways ad hoc and fortuitous. The next one will be planned.

Unfortunately, the recent performance of the aging Burger Court has often tended to lend credence to the New Right's reductionistic neo-Legal Realism—the simplistic notion that the Constitution is nothing more than "what the judges say it is." Factionalized, and often closely divided, the present Court consistently speaks with a garbled voice, doing little to maintain the aura that it has any real idea, in John Marshall's phrase, of exactly "what the law is." At times it creates the impression that the Constitution is positively incoherent: this past term it flatly overruled one of its own, supposedly "constitutional," decisions concerning federal-state relations that was only nine years old, a reversal promptly seized upon in the administration's brief seeking similar treatment for *Roe v. Wade*. Vituperative charges among the justices that opposing factions have ignored basic procedure or abandoned settled methodology in a rush to reach some predetermined outcome heighten the sense that our fundamental law is now utterly politicized—especially when those charges are so often true.

The legal academy—intellectually isolated and politically self-absorbed—has also been surprisingly little help of late in articulating a publicly defensible post-Realist theory of constitutional adjudication. As the traditional myth of judicial neutrality visibly collapses, with the most serious ramifications for every part of our society, critics of the right and left argue less about how necessary judicial value choices can be defended constitutionally than about par-

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## Chess: East-West and the Battle of Ideas

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ticular justices' politics—if not about their age and health. Liberal law professors, of all people, as though caught in a time warp, still unabashedly put forward blatantly subjectivist theories of constitutional interpretation: that the justices should be "oracular" in relation to the Constitution's text is but one example. Others, adopting an analytic framework the Moral Majority would also find congenial, declare that morality is objective, and that conscientious judges will inevitably discern the one "right answer" to every legal question through proper consideration of a few basic moral truths.

In the meantime, the difficult political and intellectual task of constructing a publicly credible replacement for 19th-century formalism—the long-bankrupt fiction that law can be "scientifically" deduced from venerable principles—is not getting done. In the absence of a convincing alternative analysis of the role of normative choice in constitutional law, the New Right's reflexive counter-"activism" prospers, both politically and intellectually.

INTO THIS swelling babel come now petitioners Laurence H. Tribe and Richard A. Posner. Each is among the very few American lawyers who both practice and think about our basic law. Posner, formerly a professor of renown at the University of Chicago Law School, is a Reagan appointee to the U.S. Court of Appeals for the Seventh Circuit. He also has been the most prolific author of federal judicial opinions during every year that he's been on the bench. Tribe, a professor at Harvard Law School, is the author of the first comprehensive treatise on American constitutional law since the *Commentaries* of Justice Joseph Story. He is, in addition, the premier Supreme Court litigator of the decade. Posner is now at the top of many lists for a future Court appointment; had the 1984 election turned out differently, Tribe would probably be instead.

But aside from the fact that each is articulate, productive, and relatively young, they have virtually nothing else in common. Indeed, in many ways they represent the two furthest poles of the post-Realist struggle to ground the individual judge's personal discretion in something more meaningful than the judge's personal whim. Posner is the progenitor of the "law and economics" school, and believes that cost-benefit analysis can settle almost any legal question. (On the bench, he has used an "economic" model to decide whether the First Amendment permits Jewish high school basketball players to wear yarmulkes attached with bobby pins despite a rule outlawing "headgear." Answer: only if there's no more cost-efficient way to keep them on.) Tribe, whose own background in mathematics is strong, was one of the earliest and most trenchant critics of the pseudo-scientism underlying most attempts to import "neutral" policy analysis techniques into the inherently value-laden process of adjudication.

Both Tribe and Posner are concerned with increasing judicial candor and coming publicly to terms with the fact that our legal system, like all common law systems, requires the judiciary to create as well as to interpret law. But they take that shared perception in very different directions. Tribe would confront such value choices head-on, and have courts and litigants make broad arguments based on the Constitution's text, history, and place in our culture. Posner prefers to deny the political and moral nature of such choices as much as possible by defining them in terms of apolitical "efficiency" instead, replacing obscurantist formalism with something just as intellectually evasive. Posner believes that cost-benefit models not only clarify hard choices, which they often do; he actually thinks that the results of such analyses should take the place of moral answers.

TO BE SURE, Posner's book is not, ostensibly, about constitutional jurisprudence. Its expressed concern is with an alleged "crisis" in the federal court system, particularly in the Circuit Courts of Appeal, caused by a recent "explosion" in litigation, and the implications of that upsurge for the quality of justice obtained there. In the first portion of the book, Posner presents a vast amount of empirical data concerning the federal judiciary to document the caseload increase. He provides an intelligent discussion of the various standard remedies (technical adjustments to eliminate state law cases, appointing more judges, establishing specialized and mini-Supreme Courts, etc.), which he rightly labels "palliatives" rather than solutions. Along the way he also collects innumerable bizarre statistics (the average number of footnotes in D.C. Circuit decisions during 1960, for



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example, or the average number of case citations in the typical signed appellate opinion of 1983) that will fascinate baseball-fixated lawyers, and perhaps form the basis for a lawyer's edition of Trivial Pursuit. In addition, Posner focuses overdue attention on two less obvious, but quite serious, effects of the increase in appeals on the judicial process: the rise of a law-clerk bureaucracy that now writes most opinions, and the pernicious use of non-law law—unpublished opinions stripped by local rules of precedential value—to decide many cases out of the public's view.

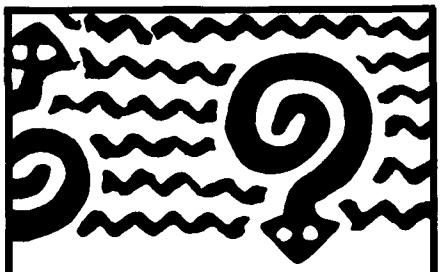
BUT the deeper design of *The Federal Courts* has little to do with any supposed caseload problem. Beneath its digressive, meandering, and statistic-cluttered surface, Posner's book is actually a carefully crafted brief for the right-wing judicial agenda that manages to make only the most passing appeal to right-wing arguments. Posner uses the quantitatively established "crisis"—the politically neutral need to protect judicial "quality"—to carry his point instead. Through this flanking maneuver, Posner explicitly preserves complete mobility for future right-wing "judicial activists," while making a politically "neutral" argument against further activism on the opposite side. Rigorous enforcement of individual rights would be a bad idea, he says, regardless of whether it is thought to be socially or politically desirable. It would hurt judicial "quality" by further clogging the courts.

Posner presents this thesis through a series of what he cleverly labels radical "speculations." The first concerns the role of the federal judiciary vis-à-vis the states. His strictly "economic" view is that only cases involving either interstate "externalities" or federal agencies and officials—water pollution, tort suits against the federal government, and many, though not all, federal criminal cases (national problems like counterfeiting, but not local bank robbery, for example)—have any good reason to be in federal court. Although Posner does see benefits in a few other areas where there are interests in national uniformity (antitrust and trademarks, for example), he is conveniently skeptical about whether "rights against age discrimination, sex discrimination, cruel and unusual punishment, double jeopardy, ineffective counsel in criminal cases" belong in federal court. He suggests that these and other non-cost-efficient uses of scarce federal resources be shunted to the states. Why there is no need for similar national standardization on these issues he does not demonstrate. Nonetheless, he estimates that eliminating federal jurisdiction in such cases would reduce federal dockets by about a fifth.

Posner's use of the cost-benefit approach in this context illustrates the general problem with using cost-benefit analysis to make legal choices. *The Federal Courts* simply assumes the validity of its criteria and its ends. But who exactly said that "quality," jeopardized or not, should be a higher priority than seeing that individual rights receive the maximum possible, nationally uniform protection? Moreover, a number of not easily quantified facts, which Posner tries to minimize, are actually rather important: in most state courts the judges are already more overextended and less politically independent than the federal ones, and often just not as good. Many state court systems are extremely slow and bureaucratic, as conservatives themselves are the first to point out in discussions of criminal justice. Indeed, many who share Posner's political agenda will be surprised by his claims concerning the devotion of state courts to the efficient enforcement of individual rights. If the congressional New Right had held Posner's sanguine view, it would never have spent so much time and energy in the early 1980s trying to pass federal "court-stripping" bills.

A RELATED idea for reducing federal judicial power, that of the Supreme Court in particular, directly implicates substantive constitutional law. Here Posner links "efficiency" with more conventional conservative historiography. In Posner's view, the 14th Amendment had two main purposes: to impose "some minimum homogeneity" on the social institutions of the states and "to complete the emancipation of the Negro." Conceding that its due process clause is textually "open-ended," he reluctantly admits that it is therefore legitimately available for invalidating at least some state laws. What kind of state laws? Only laws "that deprive a person of life, liberty, or property in violation of a fundamental social norm held by most of the *nation*."

How are we to determine whether any particular state practice violates such a norm? Not through any difficult

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moral or cultural inquiry, as one might expect (and such as virtually every other judge and scholar has performed), but through another compulsively numerical calculation. This time it is a Calhounian "consensus of state legislation"—a rigidly mechanical concurrent majority vote of the 50 states. Thus Posner asks with apparent seriousness, if 26 state legislatures decide to adopt the Islamic code of criminal justice, or to censor newspapers, "who are judges to try to stop such revolutions?" He admits that it "may be" too late, as a practical matter, to limit the 14th Amendment to the issues of race and orderly procedure included in the most narrow reading of its text. Among other things, there are just too many Supreme Court rulings making the Bill of Rights applicable to the states to make reversal socially plausible (a view our attorney general has recently indicated, incidentally, that he does not share). Still, Posner believes federal due process jurisprudence should be withering away, and certainly not expanding, as "sectional differences and hostilities"—i.e., active civil war—seem like less of an immediate danger than they did when the amendment was passed.

WITH RESPECT to what is usually regarded as the key issue concerning the exercise of judicial discretion—the concept of judicial "self-restraint"—Posner takes a decidedly iconoclastic view. Although most scholars, regardless of political persuasion, at least pay lip service to the principle that "restraint" on the part of unelected judges is an essential element of judicial behavior in a democratic society, Posner's approach is uncompromisingly functional. Neither "activism" nor "restraint" is superior in principle, he believes; in appropriate times and circumstances, they are both perfectly acceptable approaches to the judicial task, as are liberal and conservative attitudes generally. A "principled" judge is merely one who is honest about stating the real basis of a decision.

At present, when the courts are so overcrowded, Posner believes that "activism" in reviewing the actions of the elected branches unnecessarily expends scarce judicial capital. On the other hand, he suggests, conservative "activism" regarding actions by earlier courts is not only permissible, but advised. Such activism involves not just a return to historical principles or the weeding out of unnecessary cases, but also an explicit right to conservative self-defense: if only liberals are "activist," and subsequent conservative judges conscientiously abide by precedent, over time the law will inexorably develop in a liberal direction.

Posner's theory of the courts' role in construing statutes follows a similar track. Self-disciplined judges should play the "honest agents" of the legislature as far as its purposes can be discerned, he says. But where those intentions are unclear, judges should feel completely free to bring to bear their personal policy preferences and the "big ideas" of their time. Why "historical" inhibitions on judicial choice similar to those Posner would attach to due process jurisprudence shall not apply with equal force to cases involving ordinary legislation is a paradox *The Federal Courts* does not resolve—although a good clue may lie in its author's apparent low regard for the legislative process (which, after all, frequently involves

## THREE POEMS

*The North Temple Tower*

On the North Temple Tower, from the fifth floor,
I pull fierce faces at two boys below.
One gasps, and tells the other what he saw:
A waibin in the throes of vertigo.
They look again. I spread my arms and grunt.
Sudden delight: they point upwards and scowl.
One imitates a baby elephant.
The other glares and totters like an owl.
The camera clicks. They do not seem to mind
Involuntary immortality.
I change a reel, and spiral down to find
Them stomping through the flower-beds with glee.
They say "Ni hao," remembering their manners,
Then leap away through hollyhocks and cannas.

*The Gentle Waves Pavilion*

A pool as green as pea-soup. Four sleek fish,
Red as pimentos, push through bubbly scum.
A vagrant sparrow from a rocky niche
Looks critically on. Two lovers come
To gaze at fish and foreigner in the park
And talk and cuddle by the moss-trunked tree
And with a pen-knife hack their names through bark
For (if the tree survives) posterity.

*The Tarrying Garden*

Here are no vistas. Piece by piece unfolds.
Stand by the rock. The lotus and the fish,
In still pale yellows, greens and fluid golds,
Startle the rainy sky. Or if you wish
Stare at a single slab of cursive script
Sealed in the whitewash, passionate, bone-strong,
Crafted, uncrafted, singular, and stripped
Of all superfluous charm. Or walk along
The covered walks, the courtyards and the pools,
The zigzags of embodied hesitation,
A strict game where, within the given rules,
You may throw dice or follow inclination.
The Tarrying Garden, piecemeal or entire:
Meander, tarry, amble, pause, admire.

VIKRAM SETH



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intervention in the marketplace in the service of noneconomic goals).

Posner's own favorite "big idea," whose use is, of course, legitimated by this approach to statutes, is cost-benefit analysis (Holmes's social Darwinism is his other chosen example). According to it, all sorts of things—like protections against illegal search and seizure, and the rights of incarcerated persons—have been "shown" by other Posner articles, and his Seventh Circuit opinions, not to be "efficient" to enforce. He finds "strict" construction of statutes to be valuable at the present time—even though *not* to be constitutionally required—because reading statutes narrowly will usually cause legislative action to have fewer practical consequences for the judicial caseload.

Consistent with his functional approach, Posner explicitly rejects the common anti-activist argument regarding the courts' supposed inability to manage prisons, schools, or mental hospitals when they undertake such intervention; he notes quite correctly that the elected branches have been doing a pretty poor job of managing them, too. At the same time, he expresses understandable frustration with the ostentatious rhetorical "passivity" of many judges when they forge new ground (excessively "logical" reasoning, or pretending that certain rights not specified in the Constitution really are), a recurrent judicial stratagem that only masks, and very poorly, the value choices that he thinks judges should more openly admit are *necessarily* being made. Seemingly unaware of the contradiction, however, Posner himself would merely substitute the new mask of apolitical "efficiency" instead.

IF POSNER'S efforts to create yet another positivist "science" of moral decision based on cost-benefit formulas fail to meet the philosophical complexity of the judicial role, the essays collected in Laurence Tribe's *Constitutional Choices* serve to confirm the intractable nature of the intellectual and social tensions inherent in any philosophically sophisticated approach to reconciling politics and law.

*Constitutional Choices* covers a range of topics, from basic theories of jurisprudence, to court-stripping and the process of passing constitutional amendments, to elegant summaries of current law regarding the perennially confusing areas of standing and "state action." It also discusses particular Supreme Court cases and general constitutional doctrine on issues such as free speech, affirmative action, the separation of powers, and sex discrimination. Tribe is especially (and appropriately) critical of Burger Court decisions concerning the First Amendment, where he notes the Supreme Court's increasing adoption of a property-based approach to protecting political expression: under current law, the homeless poor can be kept from staging overnight sleep-ins in public parks, but it is unconstitutional to restrain the PACs and millionaires who "express" themselves by buying our legislative life.

ON THE WHOLE, Tribe is less concerned with demonstrating the correctness of the constitutional views he advocates than with illustrating the importance of developing a more intense constitutional sensibility in our political culture. Like Posner, he largely sidesteps the traditional topic of constitutional scholars—how to make review of duly authorized legislation (or executive activity) "legitimate" in a democratic system. He is more interested in figuring out how to make it work. In this effort he draws heavily upon his experience "doing" constitutional law. He focuses on "constructing constitutional arguments and counterarguments or exploring the premises and prospects of alternative constitutional approaches in concrete settings" with a view toward making the Constitution's operational "horizons more clearly visible, more amenable to understanding and critique."

Perhaps the book's most valuable contribution is its emphasis on the fact, ignored since Watergate by scholars and politicians alike, that the Constitution imposes duties on the elected branches as well as on the Court. Although—or perhaps because—Tribe's starting point is the need for "continuing self-doubt in the exercise of adjudicative power," he finds the academics' obsessive efforts to prove or disprove the legitimacy of judicial review not just "futile," but positively dangerous. By focusing *all* of our constitutional energy on the relatively narrow question of *judicial* legitimacy, he says, our scholars and commentators "encourage us all to forget that *no* exercise of power . . . is genuinely unproblematic" in a system of limited government. While others concern themselves exclusively with the development of constitutional law,

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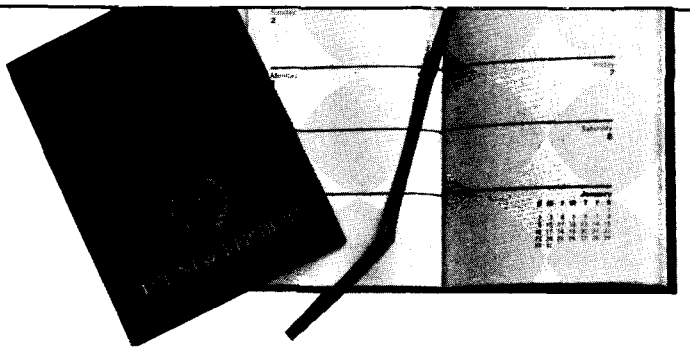

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Tribe is concerned that we develop a *constitutional politics as well.*

As Tribe makes clear, instances of constitutional irresponsibility by the elected branches have abounded in recent years. Indeed, the New Right often seems almost casual about tinkering with the basic organizing document of the Republic—regarding abortion, school prayer, or any number of other questions. For Tribe, the "Constitution serves both as a blueprint for government operations and as an authoritative statement of the nation's most important and enduring values," something that Prohibition, handgun bans, and the rest ought not "trivialize," even if one believes they are in some sense right. (He does not say what he thinks about the constitutional cynicism of a president who lectures about a balanced budget amendment while simultaneously running up the largest deficit in history.) At the same time, with respect to procedurally regular amendments that are suitable in form and generality (a ban on atheists' holding office is his example), Tribe believes that one can appropriately make constitutional—as opposed to moral or political—arguments in opposition, on the grounds that some things just do not go with a Constitution devoted to the values evidenced in ours.

FOR TRIBE, the Constitution is more than what is written. Courts may legitimately expound upon not only its text and the "tacit postulates engrained in its fabric" (the words of Justices Rehnquist and Burger), but also upon its unwritten, cultural meaning—a value he thinks presidents and legislators, as well as judges, should respect. His essay on the New Right's effort to achieve "de facto reversal" of unpopular Supreme Court decisions by congressional restriction of the federal courts' enforcement powers is particularly illuminating in its development of this theme. "Court-stripping" bills, he argues, require members of Congress to take seriously their oath of office, in which they specifically bind themselves to support the Constitution. While courts assessing a statute's constitutionality are constrained by numerous formalities regarding the determination of "legislative intent," he points out, members of the would-be enacting Congress are not so burdened. Knowing full well the real intent of court-stripping's sponsors, even those who



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disagree with the Supreme Court's outcomes still have a constitutional duty, Tribe says, to vote against such bills.

Rather unfairly, Tribe associates the trend toward electoral irresponsibility with constitutional theorists, such as Stanford Law dean John Hart Ely, who believe that the Constitution's ambiguous clauses should be read as instructing the courts to defer to democratically elected legislatures, and to exercise their own discretion so as to maximize "democracy" (through reapportionment, for example) or, as in the case of affirmative action, to maximize social participation by society's historical "outs." (Ely also would rigorously protect any rights that are *un*ambiguously endorsed by the Constitution's text, such as the right of free speech; on the other hand, even though Ely personally supports a right to choose abortion, if a democratically elected legislature banned it, Ely would have the courts uphold the ban.) First, Tribe notes that such process-perfecting approaches really only beg the question of which substantive values to protect—legislatures enact all sorts of problematic measures whose impact on "democracy" will be unclear. When, for example, should a court correct, in the name of democracy, an apportionment plan that a democratically elected legislature decided to set up? Worse, Tribe says, emphasizing democratic process over substantive constitutional value tends to weaken the constitutional sensibility of elected officials, who are lulled by such theories into the politically comfortable, socially noxious—and historically utterly erroneous—notion that they may fairly take the *vox populi* of the moment to be the *vox constitutionis* of our culture too.

YET for all of Tribe's harshness toward Ely, his own theories concerning the source of constitutional value, to be sure advanced only obliquely in *Constitutional Choices*' "arguments and counterarguments," are themselves highly questionable indeed. In his evident eagerness to discuss, and have courts make, interesting constitutional value choices, Tribe displays remarkably little regard for the importance of constitutional tactics—for conserving judicial credibility by avoiding political and social controversy that is unnecessary for reaching desired goals. In addition, his apparent confidence that the courts will agree with his normative conclusions seems to rest on a seriously mistaken view of the degree to which American society at large actually shares his own farsighted perspective. He continually appeals to some mystical social consensus for affirmation of what "we" believe the Constitution means. The present problem, however, is precisely that whatever such agreement our society may once have enjoyed—and even the most cursory reflection on the history of free speech, race relations, and the like gives strong evidence that Tribe's history is as myth-ridden as his sociology—now seems obviously to be in the process of breaking down. Tribe's eloquent attempts to will a cultural constitutional consensus into being by sheer intellectual and rhetorical force majeure make good reading, but not very good analysis. The test of a constitutional theory is not how well it works when values are widely shared. The test is how it does when different values conflict, when social polarization prevails, and when the rights of unpopular minorities are the ones at risk. Tribe would prefer to make believe that defending those rights is not really unpopular at all.

Still, however short Tribe's own theories may fall as a basis for constructing a constitutional jurisprudence equal to the present crisis, his case studies illustrate well some of the more worrisome implications of the jurisprudence that we have. Several are devoted to a disturbing trend in Burger Court decisions, which tends to confirm Posner's perception that facile distinctions between "activism" and "restraint" make no sense. A number of recent cases have evidenced a judicial inclination to expand executive branch authority, especially in cases where the "national security" is said to be involved, by any means available. Thus, the Court will now "passively" refuse to invalidate dubious exercises of executive authority (the forfeiture of private citizens' claims against Iran as a price of freeing hostages, for example), to the point of ignoring its own prior decisions and rather clear statutory law (for example, when it upheld the Reagan ban on Cuban travel in violation of congressionally mandated procedures and its own rulings explicitly establishing a right to international travel). Simultaneously, it will "actively" reject congressional efforts to circumscribe that authority by using a "legislative veto," neither condemned nor condoned by the Constitution and well adapted to the modern


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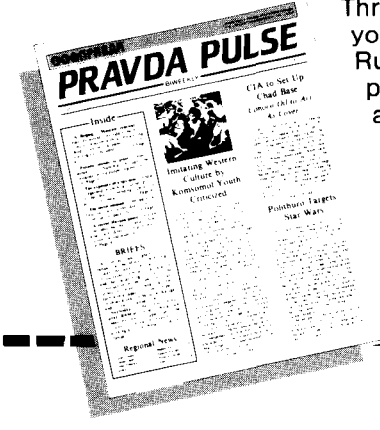


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regulatory state, to exercise its power of the purse.

Tribe demonstrates repeatedly that over the long haul the greatest threat to our liberties comes not from undue activism by the judiciary, but from executive and legislative actions that are allowed to go unchecked. Though *Constitutional Choices* says little about judicial review per se, its overall effect is to restore *The Federalist*'s original seriousness to Alexander Bickel's famous, somewhat ironic title: compared to the others, the judiciary really is the "least dangerous branch."

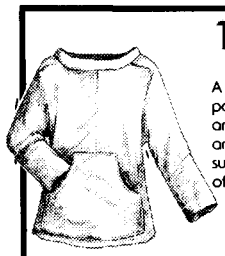
The notion that Americans as a people are embarrassed and uncomfortable about unelected judges wielding such great power is not in the slightest something of which to be ashamed. It is a sign of social health that the present falling-away from the mythical notion that the Supreme Court only "interprets" law is experienced as a loss by everyone concerned. However fictitious it may be, the traditional ideal of judicial neutrality, and of deductively reasoned judicial decision-making, continues to exercise a powerful hold over judges, justices, and the legal profession generally. And as it inevitably crumbles under political stress and post-Realist analysis, the formalist vocabulary, as a style of professional discourse, nonetheless still often serves as a powerful—and beneficial—force for judicial self-control, for preserving the perception that the Constitution really is, in some sense, "law."

Nominees for high Court appointments, many of whom are now campaigning by, among other things, writing screeds against the press as appellate judges, deserve the closest possible scrutiny by the Judiciary Committee and the Senate to make sure that they see the value of this inevitable tension between politics, morality, and law. The point is not to grade too finely their particular legal views. It is to inquire whether they have any true appreciation for the fact that the Bill of Rights is supposed to be anti-majoritarian, that the press is supposed to be annoying to those in power, and that judges are supposed to worry more about justice than input-output charts.

"Strict construction," like many other things, best begins at home, and as Tribe's remarks make clear, a "strict construction" of the senators' oath of office requires nothing less than a searching examination of future nominees. Each senator personally has a sworn legal obligation "to uphold the Constitution"; a sworn obligation to "advise" the president—not just to deliver over slavish "consent." After all, it's our *Constitution* those appointees—and, by their votes, those senators—will be expounding.

GEORGE KANNAR

George Kannar is an attorney in the national office of the ACLU. The views expressed here are his own.

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# GOLDEN BÖLL

## A Soldier's Legacy
## by Heinrich Böll
## translated by Leila Vennewitz

(Knopf, 131 pp., $11.95)

This short, uneven book is a remarkably effective war novel, all the more so—paradoxically—for being more concerned about food than about fighting. It takes the form of a verbal report, delivered by an ex-Wehrmächt soldier called Wenk to the younger brother of an officer (Lieutenant Schelling) he served under in France and in Russia during the Second World War. Wenk wants to tell the unnamed listener the facts of his brother's death. Schelling was *not* killed in action on the Eastern front as the family believes, but was murdered, during a Russian assault, by another German officer—one Schnecker—who survived the war, and who has just been spotted in a sidewalk café by Wenk. The shock of this recognition has prompted Wenk to come forward with the truth (his "legacy") and he proceeds, in engagingly rambling and discursive style, to tell his story.

First he introduces himself:

> I'm not exactly a confidence-inspiring person. Most of my time is spent lying in bed smoking cigarettes. The venetian blinds are kept closed, letting in just enough light for me to tell which side of the cigarette paper is gummed.

Wenk sounds like a character from Kafka or early Nabokov—eccentric, cynical, mysteriously self-possessed. It is a tone of voice that is somehow quintessentially Continental, in the sense of non-Anglo-Saxon, and it contributes significantly to the novel's eerie authority (all credit due to the translator, Leila Vennewitz, for capturing its character in English).

Wenk's story begins in 1943 with his transfer from his cushy billet in Paris to the Normandy coast, where his unit forms a tiny segment of the Atlantic



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Wall. The sun shines, the tide comes in and out, Wenk and his fellow soldiers wait for the invasion and strive endlessly to improve the meager share of the pilfered rations they receive. At the farthest extent of the chain of supply, the men on the Atlantic Wall have seen their allocated foodstuffs whittled down by a succession of complacent staff officers and rapacious quartermasters, all making nice profits on the black market.

ONLY ONE officer makes attempts to rectify matters—Lieutenant Schelling, whose constant complaints earn him the respect of his men and irritate his superiors. Wenk becomes Schelling's orderly and a curious relationship is soon struck up between the two men. Schelling is a melancholic, pacifistic anti-Nazi—sympathies that Wenk shares. Schelling refuses to act as a "true" officer: he relieves Wenk of his orderly's duties, constantly turns a blind eye to military misdemeanors, and encourages his men to supplement their rations in whatever way is most effective—bartering, pilfering, or straightforward theft.

The tedium of life on the Atlantic Wall and Schelling's persistent campaign against corruption in the catering corps come to an end when the regiment is transferred to the Eastern front.

> . . . . the further we were hauled into this dark land, the clearer it became that nothing we encountered here would be comparable to the kind of war we had been experiencing in France. Here anything wearing a gray uniform was filled with a frightening urge to get as far to the rear as possible.

Here too the novel changes pace and winds itself up rather abruptly. Schelling leads his company with great bravery and in so doing attracts the envy and dislike of Schnecker (already irritated by Schelling's fight for better rations). One evening in their billet the company officers get wildly drunk. Schnecker, wanting fresh supplies of medicinal brandy from the medical officer, tries to rouse him by bellowing "Alarm!" Schelling, in an attempt to prevent their men's exhausted sleep from being needlessly interrupted, fights to silence Schnecker, eventually resorting to a punch in the face—whereupon Schnecker draws his pistol and shoots him dead. Seconds later, by ironic coincidence, the Russians actually do attack and annihilate the battalion.

The novel, with no stridency, subverts the myth about the steely resolve and steadfast morale of the German army, and at the same time reinforces another truth about war, namely that conscript armies spend most of their time being either miserable or terrified. The horrors of combat on the Eastern front are more familiar to us but Böll (who served there himself) introduces other less-known facets of that baleful campaign: the race hatred of the Russians, the dread fear of being taken prisoner, the inept leadership and tactics that exacerbated the appalling conditions under which the war was fought.

But the best section of the book deals with life on the Atlantic Wall. This is often touching and elegiac, a story of unhappy men bored and frustrated beyond the appeal of any propaganda, utterly bereft of military zeal. "If only," Wenk says, "there were nothing but infantrymen, all that shouting about war or no war would be absolutely superfluous. There would be no war."

The great strength of this short novel is its steadfast refusal to glamorize. The tone is world-weary, candid, and wry. Even genuine acts of heroism, as performed by Schelling when he repulses a Russian attack, are not permitted to counterpose the effect of levelheaded condemnation. There may seem nothing new in this bleak message, but in the context of war fiction, voices such as Böll's are depressingly rare. It is perhaps a natural human response to wish to extract something positive from times of adversity and suffering, but there are occasions when that response—however honorably motivated, whatever much-needed consolation it may provide—ought to be stifled for fear that the reality should become distorted. This is something Böll has realized, and it is a point he emphasizes in *A Soldier's Legacy* time and time again to telling effect.

This is a first novel—written in 1947 and not published until now, in the season of Böll's death—and it possesses familiar first-novel defects (flawed pacing, misconceived emphasis, and an uncertain conclusion). But it was born out of a hard-won maturity, and the clear-eyed wisdom that emerges from it makes it a remarkable achievement:

> All those surviving heroes, those specialists for whom war was a game, a game that had the attraction of being a little bit


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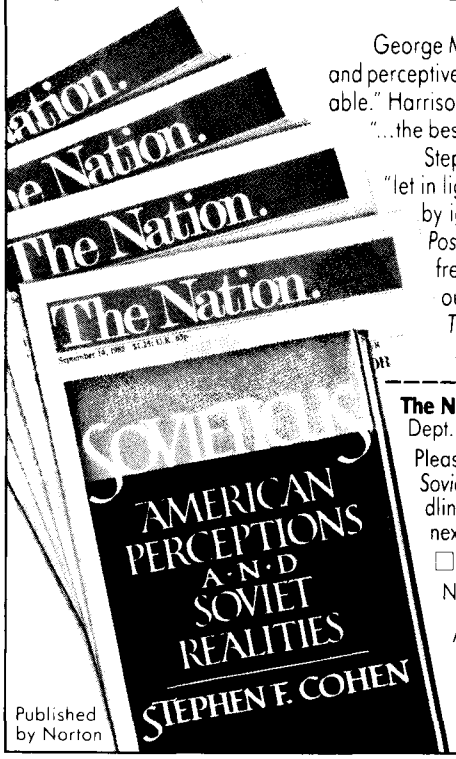


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risky: all those glib ones praise war and, in the boredom of their bourgeois monotony, long for the "good old days". . . . Just take a look today at those sentimental idiots stretching out their fancy little boots under the desks in their boring offices.

Most war novels are written by "sentimental idiots." This one was not.

**WILLIAM BOYD**

William Boyd is the author most recently of *Stars and Bars* (Morrow).

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CORRESPONDENCE, *from page 6*

Down's syndrome. The multiple surgical procedures to reconstruct the esophagus and repair the trachea are arduous and fraught with risk. Nearly one-third of all infants who receive the surgery die, and for those with additional serious defects (Baby Doe, for example) the death rate with surgery is 50 percent. At best, "successful" surgery never restores normal swallowing ability. Frequent choking and regurgitation and pneumonia are only a few of the common complications. Down's syndrome almost certainly increases the likelihood of these and other problems.

Informed of this dismal prognosis, Baby Doe's parents, supported by their physician and the court, opted against surgery. Six days later, Baby Doe died of pneumonia.

Contrary to what Mr. Krauthammer said, the Oklahoma spina bifida clinic was never conceived of, or presented as, an experiment of any kind. It allowed parents of the most severely afflicted infants to forgo life-prolonging surgery for their children in favor of supportive care and an early natural death. That infants with severe myelomeningocele usually die without surgery (and often despite it) was already well known. The program's purpose was the alleviation of "the documented suffering that is not only reduced, but prevented, if one is persuaded that death is preferable to life under certain circumstances." Both in the acceptance of and criteria for nontreatment, the Oklahoma program was similar to other spina bifida programs. The Oklahoma physicians seem to have been singled out for persecution primarily because their article was published in the midst of the Baby Doe furor.

HELEN HARRISON
*Berkeley, California*

## THE NEW REPUBLIC'S BEST BOOKS

*Following is a list of books* TNR *has recently reviewed and recommends.*

*Common Ground: A Turbulent Decade in the Lives of Three American Families* by J. Anthony Lukas (Knopf). An epic portrait of Boston during the busing crisis. (Reviewed 10/14/85)

*The War for Lebanon, 1970-1985* by Itamar Rabinovich (Cornell University Press). A cogent analysis of chaos. (10/14/85)

*The Inman Diary: A Public and Private Confession* edited by Daniel Aaron (Harvard University Press). The obsessive record of a unique American's strange life and times. (10/7/85)

*The Bureaucratization of the World* by Bruno Rizzi (The Free Press). At last an English translation of the Marxist Italian shoe salesman's classic. (10/7/85)

*Germany Today* by Walter Laqueur (Little, Brown). A calm and close reading of German anxieties. (9/2/85)

*Cahiers du Cinéma: The 1950s: Neo-Realism, Hollywood, New Wave* edited by Jim Miller (Harvard University Press). A valuable anthology of critical writing from a formative decade. (9/30/85)

*Nicaragua: Revolution in the Family* by Shirley Christian (Random House). A clear-sighted account of a tangled history. (9/30/85)

*Uncovering the Sixties: The Life and Times of the Underground Press* by Abe Peck (Pantheon). The facts, and the flavor, of a chapter in a hip movement. (9/16&23/85)

*Late Settings* by James Merrill (Atheneum). A new, elegiac collection of lyrics. (8/5/85)

*Brotherhood of Arms: General Dynamics and the Business of Defending America* by Jacob Goodwin (Times Books). The rise and fall of one defense contractor. (8/12&19/85)

**TRB**, *from page 4*

chise at O'Hare airport, worth millions of dollars, to a politically well-connected black lawyer with no experience in the business, all for an investment of $100. This in the name of promoting minority enterprise.

Obviously it costs money every time government business goes to someone other than the lowest bidder. The SBA's 8(a) program is so comically misdesigned that its rules actually *exclude* any minority business that might be able to get a competitive contract on its own. In reality, quotas and set-aside rules allow minority contractors and subcontractors to charge a premium for their services. The result is hundreds of millions of dollars a year added to the cost of government. This represents a transfer of money from the average taxpayer to people who, black or white, are almost surely better off. The special minority deals at the FCC, meanwhile, are virtually explicit programs for the creation or further enrichment of black millionaires.

What's the point? I suppose there is some sense in which black millionaires are "disadvantaged" compared to white millionaires. But is this really a disadvantage we need to build social policy around? Even most defenders of affirmative action recognize that it has its costs: arbitrary victimization of whites; social tension and resentment; bureaucracy, litigation, and economic inefficiency. I think these costs are sometimes worth paying in order to give society's greatest victims a leg up. But it's indefensible to incur these costs when the beneficiaries are prosperous business owners.

"Often those who benefit most from group preferences are those who have already come furthest in freeing themselves from past burdens." So says a special addendum to Reagan's 1986 budget. That may or may not be true of conventional affirmative action programs, but it's undeniably true about special preferences for minority businesses. So why are these the one form of minority preference that the Reagan administration has encouraged?

A Washington anthropologist I know explains it as "Republican compassion." He says, "Show them a poor, unemployed black man and they see someone who needs to work harder. Put that same black man in a three-piece suit and the milk of human kindness starts to flow."



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# WASHINGTON DIARIST

## *Deep-Fried Turkey*

**WASHINGTON IS A CITY** hunched over FTC regulations while the important stuff goes by unheeded: Madonna sings; Durban and Kabul bleed; Ford builds a gorgeous new car. The first thing that struck me when I came to Washington six years ago was how serious all the people in town were about what they were doing. Nobody here gets the joke. But there is another world in Washington, outside the government and its pilot fish, with counterparts in Cleveland and Kansas City. And the talk of that world is an article in the September issue of an excellent, quirky business-oriented city magazine called *Regardie's*, whose eponymous owner is seen frequently in shorts, open shirt, and gold chains having lunch at the Palm, hangout of macho politicos and lobbyists. The article purports to identify the 100 richest people in the city and tell you how much each is worth—a local version of the Forbes 400. Who knows whether it's accurate—it makes good reading. With some minor exceptions (Averell Harriman, pegged at $100 million to $300 million), almost none of the 100 has anything at all to do with politics or lobbying, or even with government contracting. Like most rich people in most American cities, they made their money through some form of speculating on the value of land. Of the 30 that *Regardie's* lists with a net worth of more than $100 million, 20 got rich through real estate. Also on the list are several car dealers, two soft-drink bottlers, four publishers, an ex-boxer (Sugar Ray Leonard), a liquor distributor, a candy manufacturer (Mars), a few retailers, and the owner of a circus.

**EVEN THE PALM HAS SUCCUMBED** to the Invasion of the Blackened Redfish. There it was, on the menu last week. My high-powered New York PR executive friend was delighted. Well, I lived in New Orleans for seven years, and I know that blackened redfish is an aberration. Delicious, but far from the mainstream of New Orleans cooking. When will America's urban gastronomes discover real New Orleans cuisine, whose main characteristic is, simply, fat? Live in New Orleans for six months and you'll grow at least one extra chin. What I'm waiting for is a Washington restaurant that serves potato poor boys (French fries between two pieces of French bread slathered with mayonnaise and catsup), oysters fried in lard, and greasy chili omelettes. On a recent trip to New Orleans, I found my friends talking about the culinary sensation of the season: deep-fried whole turkey. Yes, the whole thing, tossed into a huge vat of lard. Apparently the daily paper ran the recipe, omitting the instruction that the turkey must be cooked outdoors, and the kitchens of at least two of its readers caught fire. Anyway, fried turkey is supposed to taste terrific. I'm waiting for it to show up on the Palm's menu around Thanksgiving.

**SPEAKING OF PALMS** and New Orleans, Hurricane Gloria didn't do much damage here. Schools closed; people filled their bathtubs so they would have drinking water; flashlights were sold out. But all Washington got was a brisk breeze. The night before the storm was supposed to hit, I walked down L Street and found only one store with its windows taped and its showcases denuded: Brooks Brothers. Was there fear that an associate at Arnold & Porter would wade through the next day's debris and snatch a slump-shouldered blue pinstriped suit (size 42 short) from the window? With a yellow foulard tie to match?

**THE SUIT IN THE WINDOW** of Brooks Brothers cited above will not fit William J. Bennett, secretary of education. This I know thanks to *The New York Times*, which noted recently that Bennett has a 38-inch waist and wears a size 13 shoe and a size 46 overcoat. His favorite food is his wife's fried chicken (clearly he hasn't tasted fried turkey yet) or pot roast, and his favorite song is "You Cheated, You Lied" by the Shields. He snacks on hard pretzels, drinks martinis, plays touch football, and sleeps without his pajamas. This information was gleaned from an article in the *Times* under the headline "Not-So-Vital Statistics on William Bennett." The article casts no light on why the secretary opposes bilingual education unless we are to read some special meaning into the fact that his favorite musical instrument is the electric guitar.

**OTHER STRANGE THINGS** have been happening in the pages of the *Times* lately. A.M. Rosenthal, the executive editor, has been acting, we're told, in an erratic, often high-handed way, wielding the Editors' Note as a weapon. Now the following has come across our desk; it is scheduled to appear in the *Times* next week. . . .

**EDITORS' NOTE**

An article about the early days of the United Nations appeared on the front page of The Times on September 26. Through opinionated phrases and trite expressions, the article established a tone that cast its subject in a cloyingly nostalgic light.

The article, by A.M. Rosenthal, began this way: "They were strange, those first years of the United Nations, so far back in the mid-40's and 50's, and sometimes quite wonderful." In fact, the word "wonderful" (or "wonderment") appears four times in the first 18 paragraphs. The policy of The Times is to eschew such words and phrases in favor of factual descriptions.

Other examples of Mr. Rosenthal's prose include: "the sharing of an adventure that—who could say—might just possibly work out somehow, somewhat, someday"; "you had to be an ice cube not to be excited"; "that [handing Eleanor Roosevelt a pat of butter] was lovely and so was having the home phone number of Trygve Lie."

The Times's policy is to avoid such self-indulgent wording in its news columns and to stick to the facts. The Times also frowns upon: stating the obvious ("the U.N.—everybody called it by its initials"); limp Anglicisms ("rather graceful," "which is a pity," etc.); made-up words ("youngness"); and breathless archaisms ("the very center of the whole foreign world, imagine").

These and similar phrases of Mr. Rosenthal created an unbalanced, mawkish portrait of an important institution. The article violated The Times's standards of reporting. It should not have appeared.

**J.K.G.**



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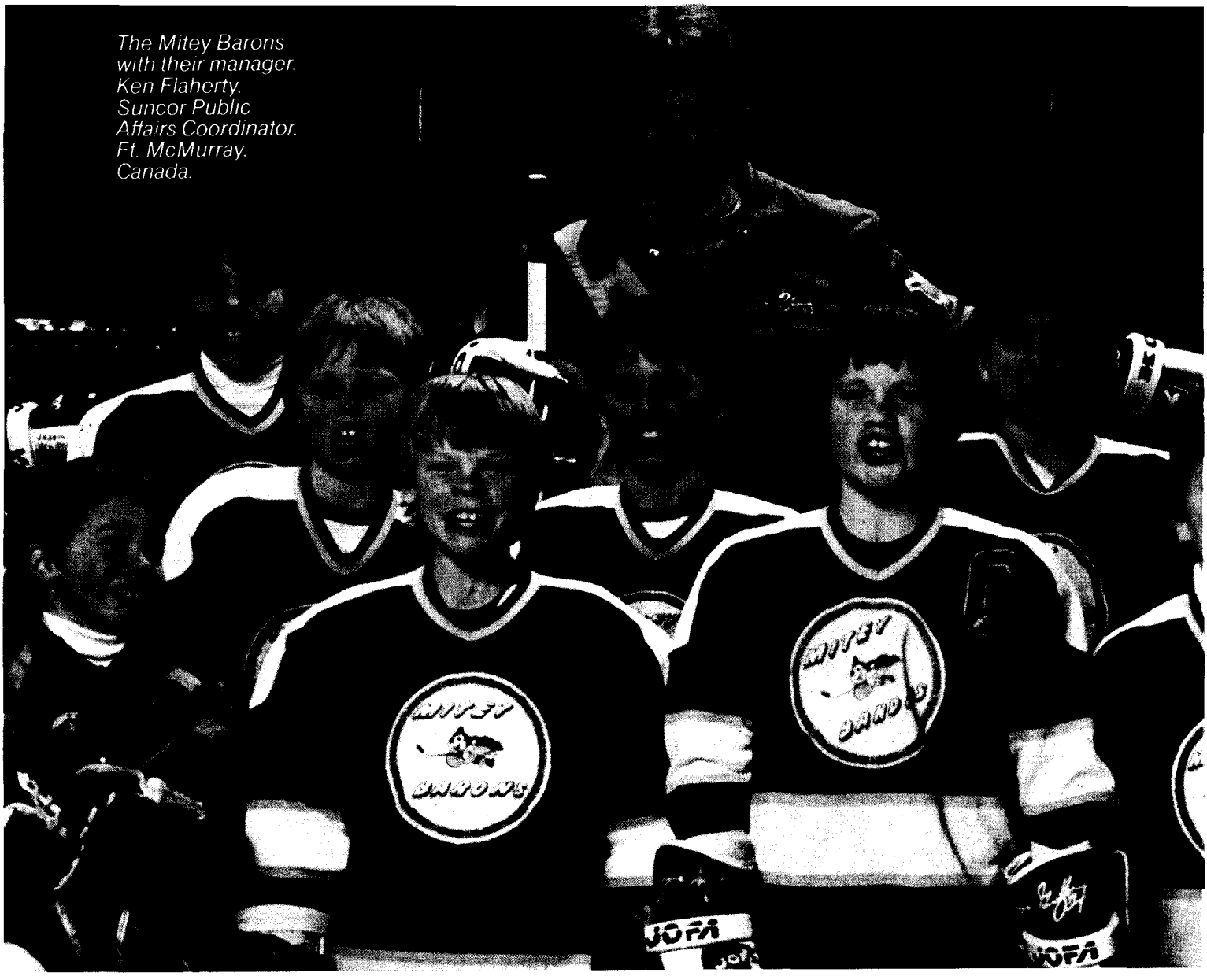

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